BENGAL SECRETARIAT LIBRARY

THE

LAND ACQUISITION ACTS

BEING

ACT I OF 1894 AND ACT XVIII OF 1885

OF THE

GOVERNOR-GENERAL OF INDIA IN COUNCIL.

ANNOTATED.

By H. BEVERLEY, M.A.,
OF THE INDIA CIVIL SERVICE.

THIRD EDITION.

CALCUTTA:
THACKER, SPINK AND CO.

1894

333.00037
B571

PRINTED BY THACKER, SPINK AND CO., CALCUTTA.

712

TABLE OF CONTENTS.

	Page.
PREFACE	vii
INDEX TO CASES CITED	xi
THE LAND ACQUISITION ACT I OF 1894	1—77
THE LAND ACQUISITION (MINES) ACT XVIII OF 1885	79—94
RULES MADE BY LOCAL GOVERNMENTS—	
BENGAL	95
BOMBAY	100
NORTH WESTERN PROVINCES	102
OUDH	108
CENTRAL PROVINCES	114
LOWER BURMA	118
GENERAL INDEX	123

PREFACE.

A NEW edition of this little book has been called for by the enactment of Act I of 1894, by which the law and procedure for the acquisition of lands for public purposes has been considerably altered. Attention has been drawn to these changes in the body of the work, but it may be useful to give a short sketch in this place of the principal changes that have been effected by the new Act.

The two previous editions of this work have been prefaced by a brief history of the law on this subject in India. It is not thought necessary to reproduce that history in this place ; it will be sufficient to indicate the changes which Act I of 1894 has introduced into the law as laid down by Act X of 1870.

By the definition clauses an easement is declared to be an interest in land for which compensation must be awarded. The expression "public purpose" has been extended so as to include the provision of village-sites in districts where it has been customary for the Government to make such provision ; and section 6 of the Act has been amended so as to permit the acquisition of land under the Act when the compensation is to be paid wholly or partly out of public revenues or some fund controlled or managed by a local authority.

Four important provisoes have been added to the definition of "entitled to act" for the purpose of safeguarding the interests of owners who are under disability. The principal of these provisoes is that no person entitled to act for any such owner shall be competent to receive the compensation-

money unless he would have been competent to alienate the land and receive and give a good discharge for the purchase-money on a voluntary sale.

Perhaps the most important change in the law is that which requires the Collector to make an award in every case whether or not the parties interested appear before him. The Collector is also authorised to enquire into objections regarding the measurement of the land to be acquired and into questions of title and apportionment, although in case of dispute he may refer these latter questions for the determination of the Court (section 30). Unless questioned in the manner provided by the Act, the Collector's award is declared to be final and conclusive.

If, however, any person interested objects to the Collector's award on any ground, he may within a certain time apply to have his objection referred for the determination of the Court—the enquiry before the Court being restricted to a consideration of the interests of the persons affected by the objection. The Court is to decide the matter referred to it in accordance with the Code of Civil Procedure, and without the aid of assessors, the provisions of Act X of 1870 as to the appointment and duties of assessors having been omitted. The decision of the Court is subject to an appeal to the High Court.

In laying down the matters which may and may not be taken into consideration in determining the compensation, the new Act introduces several changes of importance. The market-value of the land is to be calculated as it stood at the time the declaration was published, and not at the time the award is made, as under the old law; and compensation for damage for crops or trees or by reason of severance or other injury will be calculated as at the time the Collector takes possession of the land. Compensation may also now be awarded for damage *bonâ fide* resulting from any dimi-

nution in the profits of the land between the date of the declaration and the date of taking possession. The amount awarded by the Court may not be less than that awarded by the Collector; and if it is in excess, the Court may give interest on the difference.

Possession of the land will ordinarily be taken when the Collector has made his award, but in urgent cases the Collector may take possession of waste or arable land fifteen days after notice that the land is required; and special power is given to Railway Companies to take immediate possession in cases of unforeseen emergency. When possession is taken before the Collector has made his award, interest will be payable on the compensation-money from the date on which possession was taken.

The compensation is ordinarily payable when the Collector makes his award, but if the persons interested are not willing or competent to receive it, or if there is any dispute as to title or apportionment, the amount is to be deposited in Court, and no interest will be payable on it from the date of deposit. In the case of persons having only a limited interest in the land, the Collector is authorised to make some other arrangement instead of awarding compensation in money. When the persons interested are incompetent to alienate, the money is to be invested in the purchase of other lands, or pending such purchase in Government or other approved securities; and power is reserved to the Court to invest the money in any case on the application of any party interested.

The Government may withdraw from the acquisition of the land at any time before possession is taken, on paying compensation for any loss the owner has been put to in consequence of the proceedings.

When the Government proposes to take land which is said to be part of a house, manufactory or building and the owner

desires that the whole should be taken, any question whether the land does or does not form part of the house, manufactory or building is to be decided by the Court, and the test is declared to be whether the land proposed to be taken is reasonably required for the full and unimpaired use of the house, manufactory or building. Another change effected by the section which deals with this matter (section 49) is that when a claim for compensation for damage by reason of severance appears to the Government to be unreasonable or excessive, it may order the acquisition of the entire land of which the land sought to be acquired forms a part.

The rules to be made under the Act must, in order to have the force of law, be made after previous publication.

Such are the principal changes in the law effected by Act I of 1894. The Land Acquisition (Mines) Act, 1885, has been left untouched. That Act was passed in order to enable the Government to acquire land without at the same time being obliged to acquire the mines or minerals that lie underneath the land, in cases in which those mines or minerals are not the property of the State. The provisions of the Act are taken almost word for word from the Railway Clauses Consolidation Act, 1845 (8 and 9 Vict., c. 20, ss. 77—85).

The Appendix to the last edition of this book has been omitted from the present edition, and in lieu thereof I have included the rules (or extracts therefrom) of the various Local Governments framed under Act X of 1870. These rules remain in force until superseded by new rules made in accordance with the provisions of section 55 of Act I of 1894.

H. BEVERLEY.

August 1894.

INDEX TO CASES CITED.

Page

Alexander *v.* West End of London and Crystal Palace Railway Company 73
Appasami Mudali *v.* Rangappa Nattan 54
Atri Bai *v.* Arnopoorna Bai 76

Bamasoonderee Dossee *v.* Verner 48
Barnsley Canal Company *v.* Twill 87
Beckett *v.* Midland Railway Company 32
Bell *v.* Hull and Selby Railway Company 33
Bell *v.* Wilson 85
Bengal Coal Company *v.* Maharajah Mahtap Chand Bahadoor... 51
Bhageeruth Moodee *v.* Rajah Jabur Jummah Khan 54
Bholanath Mullick *v.* Heysham 27
Bigg *v.* Corporation of London 35
Boyfield *v.* Porter 75
Bunwari Lal Chowdhry *v.* Burnomoyi Dasi 52

Caledonian Railway Company *v.* Ogilvy 33, 34, 42
Caledonian Railway Company *v.* Sprot 88
Caledonian Railway Company *v.* Walker's Trustees 37
Carey *v.* Banu Miya 27
Carey *v.* Kalu Miya 27
Chamberlain *v.* West End and Crystal Palace Railway Co. ... 33
Chomu *v.* Umma 59
Chooramoni Dey *v.* Howrah Mills Company 54
Chundi Churn Chatterjee *v.* Biddoo Bodon Banerjee 4
City of Glasgow Union Railway Company *v.* Hunter... 37, 45
Cole *v.* West London and Crystal Palace Railway Company ... 73
Collector of Hooghly *v.* Rajkristo Mookerjee 27
Collector of Poonah *v.* Kashinath Khasgiwala ... 26, 42
Collector of 24-Pergunnahs *v.* Nobin Chunder Ghose... ... 18
Cowper-Essex *v.* Local Board for Acton 39
Croft *v.* London and North-Western Railway Company ... 40
Cromford Canal Company *v.* Cutts 87

Page
Davvell *v.* Roper 85
Deen Dyall Lall *v.* Mussamut Thukroo Koonwar 55
Doe d. Hyde *v.* Mayor of Manchester 12
Duke of Buccleuch *v.* Metropolitan Board of Works ... 37, 39, 43, 45
Dunne *v.* Nobo Krishna Mookerjee 54

Eagle *v.* Charing Cross Railway Company 32, 45
East and West India Docks, &c., Railway Company *v.* Gattke... 25
Elliott *v.* North-Eastern Railway Company 88

Fergusson *v.* London, Brighton and South Coast Railway Company 73
First Assistant Collector of Prant Bassein *v.* Ardesir Framji Moos 5
Furniss *v.* Midland Railway Company 73

Glover *v.* North Staffordshire Railway Company 34
Gobind Lall Seal *v.* Secretary of State for India 76
Godadhur Dass v. Dhunput Singh 3, 52, 53, 55
Gordon Stuart & Co. *v.* Maharajah Mohatab Chunder Bahadoor. 50, 54
Governors of St. Thomas's Hospital *v.* Charing Cross Railway Company 72
Great Western Railway Company *v.* Bennett 88
Great Western Railway Company *v.* Smith 87
Grosvenor *v.* Hampstead Junction Railway Company ... 73
Gur Pershad *v.* Umrao Singh 53

Hammersmith and City Railway Company *v.* Brand ... 37, 44
Herring *v.* Metropolitan Board of Works 43
Heysham *v.* Bholanath Mullick 27
Hillcoat *v.* Archbishops of Canterbury and York 28
Hills *v.* Magistrate of Nuddea 62
Holt *v.* Gas Light and Coke Company 35
Hopkins *v.* Great Northern Railway Company 33
Hurmatjan Bibi *v.* Padma Lochan Dass 59

Imdad Ali Khan *v.* The Collector of Farakhabad 15
In re Marylebone Improvement Act; *Ex parte* Edwards ... 46
In re Stewart's Trusts 59
In the matter of the Petition of H. B. Fenwick 18
Issur Chunder Banerjee *v.* Sattyo Dyal Banerjee 51

Page

Joykissen Mookerjee *v.* Reazoonissa Beebee... 51

Kally Churn Ghose *v.* Tarinee Churn Bose and Clive Jute Mill Company 29
Kamini Dabia *v.* Protap Chunder Sandyal 75
Kashim *v.* Aminbi and the Collector of Belgaum 49
Khairati Lall *v* The Secretary of State for India in Council 71, 72
Kharshedji Nusserwanjee *v.* Secretary of State for India ... 72
King *v.* Wycombe Railway Company 73
Knock *v.* Metropolitan Railway Company 32, 40

Lee *v.* Milner 44
Little *v.* Dublin and Drogheda Railway Company 33
Littler *v.* Rhyl Improvement Commissioners 46
Lyon *v.* Fishmongers Company 38

Maharajah Dheraj Mahtab Chand Bahadoor *v.* Chittro Coomaree Bibee 55
Maharajah Luchmeswar Singh *v.* Chairman of the Durbhangah Municipality 7
Maharajah Mahtab Chand Bahadoor *v.* Bengal Coal Company... 51
Marson *v.* London, Chatham and Dover Railway Company ... 73
Mayor of Blackburn *v.* Parkinson 75
Metropolitan Board of Works *v.* McCarthy ... 34, 35, 38, 39, 43
Midland Railway Company *v* Checkley 88
Minto *v.* Kalee Churn Dass 59
Mohesh Chunder Dutt *v.* Gungamoney Dossee 55
Moore *v.* Great Southern and Western Railway Company ... 33
Morgan *v.* Metropolitan Railway Company 69
Munji Khetse 25, 26, 28

New River Company *v.* Johnson 43
Nobodeep Chunder Chowdhry *v.* Brojendro Lal Roy 50
Nuzeeroodden Ahmed *v.* Railway Commissioners 3

Peari Mohun Mookerjee *v.* Audhiraj Aftab Chand 53
Penny *v.* South-Eastern Railway Company 37, 42, 43
Premchand Burral *v.* Collector of Calcutta 26

Queen *v.* Brown 29
Queen *v.* Metropolitan Board of Works 34, 36
Queen *v.* Vaughan and Metropolitan District Railway Co. 35, 41

Page

Raj Mohun Bose *v.* East Indian Railway Company 18
Raja Nilmoni Singh *v.* Rambandhu Roy 5, 49, 58, 75
Ramalakshmi *v* Collector of Kistna 71
Ramanjen Naidoo *v.* Rangia Naidoo 55
Ram Chunder Singh *v.* Raja Johur Jumma Khan 54
Raye Kissory Dassee *v* Nilcant Day 52, 62
Reddin *v* Metropolitan Board of Works 73
Rhodes *v.* Airedale Drainage Commissioners... 43
Ricket *v.* Metropolitan Railway Company 34, 42
Ripley *v.* Great Northern Railway Company 33
R. *v.* Cambrian Railway Company 16
R. *v.* Eastern Counties Railway Company 33
R. *v.* Great Northern Railway Company 4
R. *v.* Metropolitan Commissioners of Sewers 15
R. *v.* North Midland Railway Company 33
R. *v.* S. Luke's 32
R. *v.* Vaughan 43

Salter *v.* Metropolitan District Railway Company 73
Secretary of State for India in Council *v.* Shanmugaraya Mudaliar 27, 40
Secretary of State for India *v.* Sham Bahadoor 76
Senior *v.* Metropolitan Railway Company 45
Shepherd *v.* Hills 75
Smith *v.* Martin 73
Srinath Mookerjee *v.* Maharajah Mahtap Chand Bahadoor ... 50
Stebbing *v.* Metropolitan Board of Works 28, 42, 45
Steele *v.* Midland Railway Company 71, 73
Swamirao *v.* The Collector of Dharwar 8
Syud Keramut Ali Mutwalee *v.* Raja Suttochurn Ghosal ... 62

Tapidas Gobindbhai *v.* Bombay, Baroda and Central India Railway Company 40, 44
Taylor *v.* The Collector of Purneah 18, 20, 40, 71
Tuohey *v.* Great Southern and Western Railway Company ... 33

Viraragava *v* Krishnasami 59

Yesoba Dumodhur *v.* Secretary of State for India 62

THE LAND ACQUISITION ACT, 1894.

CONTENTS.

PART I.

PRELIMINARY.

SECTION.

1. Short title, extent and commencement.
2. Repeal.
3. Definitions.

PART II.

ACQUISITION.

Preliminary Investigation.

4. Publication of preliminary notification, and powers of officers thereupon.
5. Payment for damage.

Declaration of intended Acquisition.

6. Declaration that land is required for a public purpose.
7. After declaration, Collector to take order for acquisition.
8. Land to be marked out, measured and planned.
9. Notice to persons interested.
10. Power to require and enforce the making of statements as to names and interests.

Enquiry into Measurements, Value and Claims, and Award by the Collector.

11. Enquiry and award by Collector.
12. Award of Collector when to be final.
13. Adjournment of enquiry.
14. Power to summon and enforce attendance of witnesses and production of documents.
15. Matters to be considered and neglected.

Taking Possession.

16. Power to take possession.
17. Special powers in cases of urgency.

PART III.

Reference to Court and Procedure thereon.

Section.
18. Reference to Court.
19. Collector's statement to the Court.
20. Service of notice.
21. Restriction on scope of proceedings.
22. Proceedings to be in open Court.
23. Matters to be considered in determining compensation.
24. Matters to be neglected in determining compensation.
25. Rules as to amount of compensation.
26. Form of awards.
27. Costs.
28. Collector may be directed to pay interest on excess compensation.

PART IV.

Apportionment of Compensation.

29. Particulars of apportionment to be specified.
30. Dispute as to apportionment.

PART V.

Payment.

31. Payment of compensation or deposit of same in Court.
32. Investment of money deposited in respect of lands belonging to persons incompetent to alienate.
33. Investment of money deposited in other cases.
34. Payment of interest.

PART VI.

Temporary Occupation of Land.

35. Temporary occupation of waste or arable land. Procedure when difference as to compensation exists.
36. Power to enter and take possession, and compensation on restoration.
37. Difference as to condition of land.

PART VII.

Acquisition of Land for Companies.

38. Company may be authorized to enter and survey.
39. Previous consent of Local Government and execution of agreement necessary.

SECTION.

40. Previous enquiry.
41. Agreement with Secretary of State in Council.
42. Publication of agreement.
43. Sections 39 to 42 not to apply where Government bound by agreement to provide land for Companies.
44. How agreement between Railway Company and Secretary of State may be proved.

PART VIII.

MISCELLANEOUS.

45. Service of notices.
46. Penalty for obstructing acquisition of land.
47. Magistrate to enforce surrender.
48. Completion of acquisition not compulsory, but compensation to be awarded when not completed.
49. Acquisition of part of house or building.
50. Acquisition of land at cost of a local authority or Company.
51. Exemption from stamp duty and fees.
52. Notice in case of suits for anything done in pursuance of Act.
53. Code of Civil Procedure to apply to proceedings before Court.
54. Appeals in proceedings before Court.
55. Power to make rules.

THE

LAND ACQUISITION ACT

BEING

ACT No. I of 1894

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor-General on the 2nd February 1894.)

An Act to amend the law for the acquisition of land for public purposes and for Companies.

WHEREAS it is expedient to amend the law for the acquisition of land needed for public purposes and for Companies and for determining the amount of compensation to be made on account of such acquisition ; It is hereby enacted as follows :—

PART I.

PRELIMINARY.

Short title, extent and commencement.

1. (1) This Act may be called the Land Acquisition Act, 1894.

(2) It extends to the whole of British India ; and

(3) It shall come into force on the first day of March 1894.

Under the Scheduled Districts Act, 1874, the Act has been declared to be in force in the following Scheduled Districts, namely :—The districts of Hazaribagh, Lohardugga, and Manbhum, and Pergana Dhalbhum and the Kolhan in the district of Singbhum (*Gazette of India*, 21st October 1881, Part I, p. 504),

and the North-Western Provinces Tarai (*Gazette of India*, 23rd September 1876, Part I, p. 505). It is also included in the Schedule to the Santal Perganas Laws Regulation III of 1886.

Repeal.

2. (1) The Land Acquisition Act, 1870, and section 74 of the Punjab Courts Act, 1884, are hereby repealed.

(2) But all proceedings commenced, officers appointed or authorised, agreements published and rules made under the said Land Acquisition Act shall, as far as may be, be deemed to have been respectively commenced, appointed or authorised, published and made under this Act.

(3) Any enactment or document referring to the said Land Acquisition Act or to any enactment thereby repealed shall, so far as may be, be construed to refer to this Act or to the corresponding portion thereof.

All proceedings commenced under Act X of 1870 will, as far as may be, be deemed to have been commenced under this Act.

Officers appointed to exercise the functions of a Collector or of a Court under section 3 or to make an enquiry under section 48 of Act X of 1870 will be deemed to have been appointed under section 3 or section 40 respectively of this Act. Officers authorised under section 4 or under section 7 or under section 46 of Act X of 1870 will be deemed to have been authorised under section 4 or section 7 or section 38 of this Act, as the case may be.

Agreements published under section 50 of Act X of 1870 will be deemed to have been published under section 42 of this Act.

Rules made under section 59 of Act X of 1870 will be deemed to have been made under section 55 of this Act.

Definitions.

3. In this Act, unless there is something repugnant in the subject or context,—

(*a*) the expression "land" includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth :

The term "land" inc'udes the trees, buildings and crops standing thereon. See section 19, sub-section (1) clause (*a*).

As regards easements, see clause (*b*) of this section, under which a person is to be deemed "interested in land" if he is interested in an easement affecting the land.

In a case not reported (Appeal from original decree 327 of 1884) the Calcutta High Court allowed compensation for the value of *sand* lying in the land

As regards mines and minerals, see the Land Acquisition (Mines) Act XVIII of 1885 (*post*), which is to be read with and taken as part of this Act In England, railway companies are not entitled to the minerals underlying the land purchased by them, but they remain the property of the original owner, who cannot work them, however, without giving notice to the Company, and the Company then has the option of purchasing them at a fair price. Minerals thus form an exception to the rule that the compensation is to be assessed once for all.

(*b*) the expression "person interested" includes all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land:

That is to say, every claimant must be treated as a person interested until his claim has been adjudicated upon. So Regulation I of 1824 spoke of persons having *or claiming to have* an interest. By Act VI of 1857 the term included "all persons interested in the land, either for life, or for years, or in remainder, reversion or succession, and all mortgagees, leaseholders or tenants, not being tenants by the month or at will, of such land." A farmer (*ijaradar*) was accordingly held to be a person interested. —*Nuzeeroodeen Ahmed* v. *The Railway Commissioners and others*, 1 Hay, 157; Marsh. 91. A zemindar, putnidar or other intermediate tenure-holder, and certain classes of ryots may be persons interested. A ryot with a right of occupancy is a person interested, inasmuch as he presumably holds at beneficial rates, and could not be ejected by his zemindar without compensation. See *Godadhar Dass* v. *Dhunput Sing*, I. L. R., 7 Cal. 585. By the English

Statute no person is entitled to compensation who has "no greater interest than as a tenant for a year or from year to year,"—that is, who has less than a year of his term unexpired at the time when heis required to give up possession.—*Reg.* v. *Great Northern Railway*, 46 L. J., Q. B. 4. By Act VI of 1857, section 7, when any question arose respecting the title to the land or any rights or interests therein between two or more persons making conflicting claims in respect thereof, the person deemed to be in possession as owner or in receipt of the rents as being entitled thereto, was held to be the person interested for the purpose of determining the amount of compensation, the other person or persons being left to establish their right by suit under sections 28-30.—*Chundi Churn Chatterjee* v *Biddoo Bodon Banerjee*, 10 W. R. 48. Under Act X of 1870 such questions were referred to the Court under section 15 of that Act. Under the present Act the Collector is to make an enquiry under section 11 into the respective interests of the persons claiming the compensation, and his award is to state (among other things) the apportionment of the compensation among all the persons known or believed to be interested in the land, of whom or of whose claims he has had information; and under section 18 any person interested who has not accepted the award may require the Collector to make a reference to the Court as to the persons to whom the compensation is payable. Or, if there is a dispute as to title or as to the apportionment of the compensation, the Collector may of his own motion refer such dispute for the decision of the Court (section 30).

(*c*) the expression "Collector" means the Collector of a district, and includes a Deputy Commissioner and any officer specially appointed by the Local Government to perform the functions of a Collector under this Act:

But see section 5.

(*d*) the expression "Court" means a principal Civil Court of original jurisdiction, unless the Local Government has appointed (as it is hereby empowered to do) a special judicial officer within any specified local limits to perform the functions of the Court under this Act:

The "Court" here mentioned is the only Court that has jurisdiction under the Act. The principal Civil Court of original jurisdiction is ordinarily that of the District Judge, and the District Judge cannot transfer the proceedings to a Subordinate Court under the provisions of the Bengal, North-Western Provinces and Assam Civil Courts Act XII of 1887, section 23. Nor under the Bombay Civil Courts Act XIV of 1869.—*The First Assistant Collector of Prant Bassein* v. *Ardesir Framji Moos*, I. L. R, 16 Bom. 277. But when a reference is made to the Civil Court under Bengal Act VI of 1880, section 28, in respect of damage caused or likely to be caused by any drainage scheme carried out under the Act, the principal Civil Court of original jurisdiction may, when the amount of compensation assessed by the Commissioners does not exceed one thousand rupees, transfer a reference under Part III of this Act to any Subordinate Judge in the same district, and a reference under Part IV of the Act to any Moonsiff in the same district.

But the Local Government is hereby empowered to appoint a special officer to perform the functions of the Court under the Act, the only condition being that he must be a *judicial* officer. A Moonsiff therefore may be appointed under this clause, and his pecuniary jurisdiction will probably not be limited to one thousand rupees by the provisions of section 19 of the Bengal, North-Western and Assam Civil Courts Act. An appeal from his decision will lie to the High Court direct under section 54, and the final decision will operate as *res judicata* between the parties. —*Raja Nilmoni Singh Deo* v. *Rambandha. Roy*, L. R., 8 I. A. 90, I. L. R, 7 Cal. 388.

(*e*) the expression "Company" means a Company registered under the Indian Companies Act, 1882, or under the (English) Companies Acts, 1862 to 1890, or incorporated by an Act of Parliament or of the Governor-General in Council, or by Royal Charter or Letters Patent :

(*f*) the expression "public purpose" includes the provision of village-sites in districts in which the Local Government shall have declared by

notification in the official Gazette that it is customary for the Government to make such provision: and

This clause is new. It is to be observed that the Act can only be put in force in districts where it is *customary* for the Government to provide village sites. An amendment to extend the clause to cases of *necessity* was negatived in the Legislative Council. See *Gazette of India* for 1894, Part VI, p. 25.

(*g*) the following persons shall be deemed persons "entitled to act" as and to the extent hereinafter provided (that is to say)—

trustees for other persons beneficially interested shall be deemed the persons entitled to act with reference to any such case, and that to the same extent as the persons beneficially interested could have acted if free from disability :

a married woman, in cases to which the English law is applicable, shall be deemed the person so entitled to act, and, whether of full age or not, to the same extent as if she were unmarried and of full age ; and

the guardians of minors and the committees or managers of lunatics or idiots shall be deemed respectively the persons so entitled to act, to the same extent as the minors, lunatics or idiots themselves, if free from disability, could have acted :

Provided that—

(*i*) no person shall be deemed "entitled to act" whose interest in the subject-matter shall be shown to the satisfaction of the Collector or Court to be adverse to the interest of the person interested for whom he would otherwise be entitled to act ;

(*ii*) in every such case the person interested may appear by a next friend, or, in default of his appearance by a next friend, the Collector or Court, as the case may be, shall appoint a guardian for the case to act on his behalf in the conduct thereof;

(*iii*) the provisions of Chapter XXXI of the Code of Civil Procedure shall, *mutatis mutandis*, apply in the case of persons interested appearing before a Collector or Court by a next friend, or by a guardian for the case, in proceedings under this Act; and

(*iv*) no person "entitled to act" shall be competent to receive the compensation-money payable to the person for whom he is entitled to act, unless he would have been competent to alienate the land and receive and give a good discharge for the purchase-money on a voluntary sale.

The expression "entitled to act" occurs only in section 9, sub-section (3), which requires the Collector to serve notices of an intended acquisition of land on the occupier "and on all such persons known or believed to be interested therein, or to be *entitled to act* for persons so interested, as reside or have agents authorised to receive service on their behalf, within the revenue district in which the land is situate." This clause defines the persons who are entitled to act for others, and the extent to which they can act.

The provisoes to the clause are new, and should be carefully borne in mind. Chapter XXXI of the Code of Civil Procedure relates to "suits by and against minors and persons of unsound mind."

As regards proviso (*iv*) see Act VIII of 1890, sections 28 and 29, and Act XXXV of 1858, section 14.

See also sections 31 and 32 of this Act (*post*).

In Maharajah Luchmeswar Singh v. *Chairman of the Durbhangah Municipality*, L. R, 17 I A. 90, I. L. R., 18 Cal. 99, the Privy Council held (1) that the guardian of a minor's estate has no power to waive a right to compensation for part of the

estate taken under the Act, although the owner, had he been of full age, might have waived it; (2) that although the Court of Wards had no power to alienate the land of a minor of whose estate it had charge, yet possession might have been lawfully taken of the land for a public purpose under and in conformity with the Act, if there had been due compliance with its provisions as regards compensation to the minor's estate; but (3) where compensation had not been given, and a merely nominal consideration had passed, the Collector as the representative of the Court of Wards not having acted so as to protect the interests of the minor, no valid title to the land was established as against the ward, and on his attaining full age, he could recover it with mesne profits.

And in *Swamirao* v. *The Collector of Dharwar*, I. L. R., 17 Bom. 299, it was held that a minor was not bound by the action of his guardian in waiving an objection to the appointment of a person as assessor under Act X of 1870 who was disqualified from acting as such in consequence of having a substantial interest in the matter at issue.

PART II.

ACQUISITION.

Preliminary Investigation.

Publication of preliminary notification and powers of officers thereupon.

4. (1) Whenever it appears to the Local Government that land in any locality is likely to be needed for any public purpose, a notification to that effect shall be published in the official Gazette, and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality.

(2) Thereupon it shall be lawful for any officer, either generally or specially authorised by such Government in this behalf, and for his servants and workmen,—

to enter upon and survey and take levels of any land in such locality;

to dig or bore into the subsoil;

to do all other acts necessary to ascertain whether the land is adapted for such purpose ;

to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon ;

to mark such levels, boundaries and line by placing marks and cutting trenches ;

and, where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle :

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling-house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of his intention to do so.

The distinction should be observed between the notification that land in any locality is *likely to be* needed under section 4 and the declaration that some particular land *is* needed under section 6.

For penalties on obstruction, see section 46.

Payment for damage.

5. The officer so authorised shall at the time of such entry pay or tender payment for all necessary damage to be done as aforesaid, and, in case of dispute as to the sufficiency of the amount so paid or tendered, he shall at once refer the dispute to the decision of the Collector or other chief revenue-officer of the district, and such decision shall be final.

The words "*or other chief revenue-officer of the district*" are new, and explain the sense in which the term "Collector' is used in this section. The dispute must be decided by the chief revenue-officer of the district, and not by an officer specially appointed by the Government to perform the functions of a Collector under this Act under section 3, clause (*c*).

Declaration of intended Acquisition.

Declaration that land is required for a public purpose.

6. (1) Subject to the provisions of Part VII of this Act, whenever it appears to the Local Government that any particular land is needed for a public purpose, or for a Company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorized to certify its orders:

Provided that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a Company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority.

(2) The declaration shall be published in the official Gazette, and shall state the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and, where a plan shall have been made of the land, the place where such plan may be inspected.

(3) The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a Company, as the case may be; and, after making such declaration, the Local Government may acquire the land in manner hereinafter appearing.

The Act only relates to the acquisition of land needed (1) for a public purpose, or (2) for a Company as defined in section 3. The proviso to sub-section (1) contains a further restriction that no declaration under this section shall be made unless the compensation to be awarded is to be paid by a Company or *wholly or partly* out of public revenues or some fund controlled or managed by a local authority. Act X of 1870 required that the whole of the compensation must be paid "out of public revenues or out of some Municipal fund or by a Company." Under the present Act if a contribution towards the cost is made out of a Municipal or local fund, the land may be acquired under the Act.

In England it has been held that when land has been taken under the compulsory powers of an Act of Parliament, the Company may be restrained from using it for other than the specified purpose.

By the Tramways Act XI of 1886, section 7, sub-section (3), the Local Government may, in the order for the acquisition of land for the purposes of a tramway of which the promoter is not a Company, direct that land may be acquired for the promoter under the provisions of this Act in the same manner and on the same conditions as it might be acquired for the purposes of the tramway if a Company was the promoter.

The provisions of the Act have been made applicable, either for the purpose of acquiring land or for the purpose of assessing compensation for damage done to land, under various local statutes, an abstract of which was given in the second edition of this book. In certain cases under these special Acts land may be acquired under this Act for *quasi*-private purposes. An instance of this is to be found in the Irrigation Acts, when any person desires the construction of a new village-channel, but is unable or unwilling to construct it under a private arrangement with the owners and occupiers of the land affected. See Act III (B C.) of 1876, section 52.

It is not absolutely necessary that Government should acquire the land after making the declaration (section 48).

After declaration, Collector to take order for acquisition.

7. Whenever any land shall have been so declared to be needed for a public purpose, or for a Company, the Local Government, or some officer authorized by the Local Government in this behalf, shall direct the Collector to take order for the acquisition of the land.

Land to be marked out, measured and planned.

8. The Collector shall thereupon cause the land (unless it has been already marked out under section 4) to be marked out. He shall also cause it to be measured, and (if no plan has been made thereof) a plan to be made of the same.

The Collector must disburse all costs of measurement.

For penalties on obstruction, see section 46.

It is to be remarked that the Act does not provide for measurement of the land in the presence of the parties interested, but objections as to the measurements may be preferred to the Collector (section 9) and will be enquired into by him under section 11 of the Act; and a person interested may, under section 18, require the Collector to make a reference to the Court for the determination of his objection as to the measurement of the land.

The Land Clauses Consolidation Act, 1845, contains a provision (section 124) regarding interests in land which have been omitted to be purchased through mistake or inadvertence. As regards defective measurement, see *Doe. d. Hyde* v. *Mayor of Manchester*, 12 C. B. 474.

Notice to persons interested.

9. (1) The Collector shall then cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intends to take possession of the land, and that claims to compensation for all interests in such land may be made to him.

(2) Such notice shall state the particulars of the land so needed, and shall require all persons interested in the land to appear personally or by agent before the Collector at a time and place therein mentioned (such time not being earlier than fifteen days after the date of publication of the notice), and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests, and their objections (if any) to the measurements made under section 8. The Collector may in any case require such statement to be made in writing and signed by the party or his agent.

(3) The Collector shall also serve notice to the same effect on the occupier (if any) of such land and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested, as reside or have agents authorized to receive service on their behalf, within the revenue district in which the land is situate.

(4) In case any person so interested resides elsewhere, and has no such agent, the notice shall be sent to him by post in a letter addressed to him at his last known residence, address or place of business and registered under Part III of the Indian Post Office Act, 1866.

This section provides for the publication of a *general* notice on or near the land, and for the service of *special* notices on the occupier and other persons known or believed to be interested.

The notice must state the particulars of the land needed and must require the persons interested to state their objections (if any) to the measurements made under section 8.

The last sentence of sub-section (2) is new.

(3) *Entitled to act.*—See definition in section 3.

As to the mode of service of notice see section 45. Part III of Act XIV of 1866 relates to "registered letters."

By the next section the intentional omission to file a statement of claim is made a penal offence under section 176 of the Indian Penal Code.

Power to require and enforce the making of statements as to names and interests.

10. (1) The Collector may also require any such person to make or deliver to him, at a time and place mentioned (such time not being earlier than fifteen days after the date of the requisition), a statement containing so far as may be practicable, the name of every other person possessing any interest in the land or any part thereof as co-proprietor, sub-proprietor, mortgagee, tenant or otherwise, and of the nature of such interest, and of the rents and profits (if any) received or receivable on account thereof for three years next preceding the date of the statement.

(2) Every person required to make or deliver a statement under this section or section 9 shall be deemed to be legally bound to do so within the meaning of sections 175 and 176 of the Indian Penal Code.

Sub-section (1). The period of *three* years has been substituted for one year under Act X of 1870. The time within which

and the place where the statement is to be made or delivered must be specified in the notice.

Section 175 of the Indian Penal Code provides a penalty for the intentional omission to produce or deliver up any document to any public servant, and section 176 for the intentional omission to give any notice or to furnish information on any subject to any public servant. In either case the offender may be punished with simple imprisonment for one month or fine not exceeding five hundred rupees, or both.

Enquiry into Measurements, Value and Claims, and Award by the Collector.

Enquiry and award by Collector.

11. On the day so fixed, or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given under section 9 to the measurements made under section 8, and into the value of the land, and into the respective interests of the persons claiming the compensation, and shall make an award under his hand of—

(*i*) the true area of the land ;

(*ii*) the compensation which in his opinion should be allowed for the land ; and

(*iii*) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him.

The provisions of the law relating to the enquiry by the Collector and the reference to the Court have been considerably modified by the new Act. Under Act X of 1870 the Collector could only make an award if all the persons interested attended at the enquiry and accepted his tender of compensation for the land. In any other case he was bound to refer the matter for the determination of the Court. By the present Act the Collector is

bound to make an award in every case, whether the persons interested attend or not, and it is only on the written application of a person interested who has not accepted the award that he is required to refer an objection for the determination of the Court. This change was rendered imperative by the large number of petty cases in which it was not worth any person's while to attend, but which owing to the non-attendance of the persons interested had under the old law to be referred to the Court.

The Collector's enquiry is not limited, as under the old law, to an enquiry as to the value of the land, but is to be full and complete so as to enable him to make a final award. He is to enquire

(*a*) into the objections (if any) to the measurements made under section 8 ;

(*b*) into the value of the land ; and

(*c*) into the respective interests of the persons claiming the compensation.

And he is to make an award showing

(*i*) the true area of the land ;

(*ii*) the compensation which, in his opinion, should be allowed for the land ; and

(*iii*) the apportionment of the said compensation among all the persons known or believed to be interested in the land, whether or not they have appeared before him.

The claims to the compensation may involve a conflict of claims in respect of the title to the land or any rights thereto or interests therein, and in such a case it is clearly the intention of the law that the Collector should make a summary enquiry in respect of such conflicting claims and enter in his award the person or persons whom he believes to be entitled to the compensation, leaving the persons who are dissatisfied with his award to apply for a reference to the Court under the provisions of section 18.

Or the Collector may, if he thinks fit, instead of making an award as to (*iii*), proceed under section 30 to refer for the decision of the Court any dispute as to the apportionment of the compensation or as to the persons to whom it is payable.

It has been ruled in England, that if the liability to make compensation is denied altogether, the question must be referred to the regular tribunals.—*Reg.* v. *Metropolitan Commissioners of Sewers*, 1 El. & Bl 702. So in *Imdad Ali Khan* v. *The Collector of Farakhabad*, I L. R., 7 All. 817, it was held that where the

Collector claims the land as the property of Government or of a Municipality, and denies the title of other claimants, he has no power to make a reference to the District Judge, and the Judge has no jurisdiction to entertain or determine such reference. "Such a position would be inconsistent with the applicability of the Act, for it denies the right of any person to compensation. It seems a contradiction in terms to speak of the Collector as seeking the acquisition of the land, when he asserts that the land is his own, and that no other person has any interest in it." The fact of the claimant being entitled to the compensation he seeks is a condition precedent to his right to avail himself of the machinery provided by the Act. If he has no title to compensation, the whole proceedings before the arbitrator or a jury are *coram non judice.*—*Reg.* v. *Cambrian Railway Co.*, L. R., 4 Q. B. 320.

Award of Collector when to be final.

12. (1) Such award shall be filed in the Collector's office, and shall, except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested, whether they haver espectively appeared before the Collector or not, of the true area and value of the land, and the apportionment of the compensation among the persons interested.

(2) The Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made.

Sub-section (1),—"*Except as hereinafter provided.*" That is to say, unless a reference is made to the Court under Part III or Part IV of the Act. The award unless set aside will be final and conclusive as between the Collector and the persons interested, whether they have appeared or not; but the section does not say that it will be final and conclusive as between the persons interested *inter se.* On the contrary, see the third proviso to section 31.

As in the next preceding section, the words "the apportionment of the compensation among the persons interested" would seem to include the result of the enquiry as to the respective interests of the persons claiming the compensation.

Sub-section (2).—"*Immediate* notice." By proviso (*b*) to section 18 an application for a reference to the Court must be made

within six weeks of the receipt of this notice, unless six months have expired from the date of the Collector's award.

Adjournment of enquiry.

13. The Collector may, for any cause he thinks fit, from time to time adjourn the enquiry to a day to be fixed by him.

Power to summon and enforce attendance of witnesses and production of documents.

14. For the purpose of enquiries under this Act the Collector shall have power to summon and enforce the attendance of witnesses, including the parties interested or any of them, and to compel the production of documents by the same means, and (so far as may be) in the same manner, as is provided in the case of a Civil Court under the Code of Civil Procedure.

The words "*including the parties interested or any of them*" are new.

For the provisions regarding the summoning and enforcing the attendance of witnesses and compelling the production of documents, see ss. 159—178 and 130—136 of the Code of Civil Procedure.

Matters to be considered and neglected.

15. In determining the amount of compensation, the Collector shall be guided by the provisions contained in sections 23 and 24.

See notes under sections 23 and 24.

Taking Possession.

Power to take possession.

16. When the Collector has made an award under section 11, he may take possession of the land, which shall thereupon vest absolutely in the Government, free from all encumbrances.

In ordinary cases the Collector is not entitled to take possession of the land on behalf of Government until he has made his award; but the next following section authorises him to take possession sooner in certain urgent cases.

The land vests in the Government in the first instance in every case, and if it is required for a Municipal or Local Board or for a

Company, it is necessary that it should be regularly and legally granted or conveyed by Government to the particular Board or Company concerned.

Where the Collector postpones entry for any reason, he will ordinarily do so, as under Act X of 1870, on terms adjusted with the occupants.

When once possession has been taken, the Government is bound to complete the acquisition (section 48).

Under Act VI of 1857 it was ruled that, "by the 8th section of that Act, the land became vested in the Government absolutely and free from every right or interest therein of whatever description possessed either by the former proprietors or by other person" —*The Collector of the 24-Pergunnahs* v. *Nobin Chunder Ghose*, 3 W. R 27;—such as a right-of-way previously enjoyed by the public over the land—*In the matter of the Petition of H. B. Fenwick*, 14 W. R, Cr. R. 72; 6 B. L R., Ap. 47—or other easements—*Taylor* v. *The Collector of Purneah*, I L R, 14 Cal, 423. But the compulsory acquisition of land will not justify a nuisance —*Rajmohun Bose* v. *East Indian Railway Co.*, 10 B L R, 241.

The land vests in Government from the date when the Collector takes possession thereof, and it is the persons who are interested in the land at that date who are entitled to the compensation (Appeal from original decree 232 of 1883, Calcutta High Court, not reported.)

The minerals lying under the land will also apparently vest in the Government unless a statement to the contrary is made under the provisions of s. 3, Act XVIII of 1885 (*post*).

Special powers in cases of urgency.

17. (1) In cases of urgency, whenever the Local Government so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in section 9, sub-section (1), take possession of any waste or arable land needed for public purposes or for a Company. Such land shall thereupon vest absolutely in the Government, free from all encumbrances.

(2) Whenever, owing to any sudden change in the channel of any navigable river or other unforeseen emergency, it

becomes necessary for any Railway Administration to acquire the immediate possession of any land for the maintenance of their traffic or for the purpose of making thereon a river-side or ghat station, or of providing convenient connection with or access to any such station, the Collector may, immediately after the publication of the notice mentioned in sub-section (1) and with the previous sanction of the Local Government, enter upon and take possession of such land, which shall thereupon vest absolutely in the Government free from all encumbrances:

Provided that the Collector shall not take possession of any building or part of a building under this sub-section without giving to the occupier thereof at least forty-eight hours' notice of his intention so to do or such longer notice as may be reasonably sufficient to enable such occupier to remove his moveable property from such building without unnecessary inconvenience.

(3) In every case under either of the preceding sub-sections the Collector shall at the time of taking possession offer to the persons interested compensation for the standing crops and trees (if any) on such land and for any other damage sustained by them caused by such sudden dispossession and not excepted in section 24; and, in case such offer is not accepted, the value of such crops and trees and the amount of such other damage shall be allowed for in awarding compensation for the land under the provisions herein contained.

By sub-section (1) the Collector is empowered in cases of urgency, with the previous sanction of the Local Government, to take possession of any *waste or arable* land on the expiration of *fifteen days* from the publication of the general notice under section 9, sub-section (1) that the Government intends to take possession of the land, and before any award has been made. But the publication of the declaration under section 6 of the Act is a necessary preliminary, and the land must also be marked out and measured under section 8.

Sub-section (2) is new. In the case there referred to the Collector may take possession *immediately* after the publication of the notice, and there is no restriction as to the nature of the land. But in this case also a previous declaration and measurement would seem to be necessary.

Sub-section (3). When possession of the land is taken before an award is made, the Collector may at once offer compensation for the standing crops and trees (if any) on the land, and for damages caused by the suddenness of the dispossession in a case under sub-section (2), and if his offer is not accepted the value of the crops and trees and the amount of damage must be assessed in determining the compensation for the land. The fact of taking possession of the land before an award is made will not exempt the Government from the liability to make compensation.

Land taken under the Act is taken discharged of all easements, and the loss of easements must be taken into account in assessing compensation for injurious affection—*Taylor* v. *Collector of Purneah*, I. L R., 14 Cal., 423.

PART III.

Reference to Court and Procedure thereon.

Reference to Court.

18. (1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken :

Provided that every such application shall be made,—

(*a*) if the person making it was present or represented before the Collecto rat the time when he made his award, within six weeks from the date of the Collector's award ;

(*b*) in other cases, within six weeks of the receipt of the notice from the Collector under section 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire.

By sub-section (1) of this section any person interested who has not accepted the Collector's award, may apply in writing that the matter be referred to the Court for determination. Acceptance of payment without protest is equivalent to acceptance of the award, and no person who has so accepted payment is entitled to make an application under this section. See the second proviso to section 31, sub-section (2). The application must be made (*a*) within six weeks from the date of the award if the applicant was present or represented at the time the Collector made the award, or (*b*) in other cases within six weeks from the receipt of notice of the award under section 12, sub-section (2), or within six months from the date of the award, whichever period shall first expire.

A "person interested" must, it is presumed, include a person claiming to be interested, and such a person may apparently, within six months from the date of the Collector's award, apply for a reference to Court even though he has not appeared or been represented before the Collector, nor been named in the Collector's proceedings. If no application be made under this section, a person claiming to be interested would still have a right of suit under the third proviso to sub-section (2) of section 31; but it is open to question whether such suit would lie, if he appeared or was represented before the Collector.

The objection to the award may relate to

(1.) the measurement of the land;
(2.) the amount of the compensation;
(3.) the persons to whom it is payable;
(4.) the apportionment of the compensation among the persons interested.

And the grounds of the objection must be stated in the application.

Independent of a reference under this section on the application of a party interested, the Collector may of his own motion

under section 30 refer to the Court any dispute as to the apportionment of the compensation or any part thereof or as to the persons to whom the same or any part thereof is payable.

Collector's statement to the Court.

19. (1) In making the reference, the Collector shall state, for the information of the Court, in writing under his hand,—

(*a*) the situation and extent of the land, with particulars of any trees, buildings or standing crops thereon ;

(*b*) the names of the persons whom he has reason to think interested in such land ;

(*c*) the amount awarded for damages and paid or tendered under sections 5 and 17, or either of them, and the amount of compensation awarded under section 11 ; and,

(*d*) if the objection be to the amount of the compensation, the grounds on which the amount of compensation was determined.

(2) To the said statement shall be attached a schedule giving the particulars of the notices served upon, and of the statements in writing made or delivered by, the parties interested respectively.

Sub-section (1) has been retained from Act X of 1870, but the particulars therein given are almost all to be stated in the Collector's award under section 11, a copy of which, it is to be presumed, will be supplied to the Court.

It is to be observed that no statement is required under this section as to the apportionment of the compensation among the persons interested, although this is one of the points in regard to which an objection may be preferred.

It is not clear with what object the Collector is required to state the amount awarded for damages and paid or tendered under section 5, as under that section the Collector's decision is final.

Sub-section (2) does not state clearly what particulars are to be given of the notices and of the written statements. As regards the former, it may be necessary for the Court to know upon what persons notices were issued and served, and also to

be furnished with the addresses of the persons upon whom the Court has to serve notices under the next following section. As regards the written statements the Court ought to be supplied either with the originals or with authenticated copies of such as are material to the objection. The Report of the Select Committee states that the sub-section was added in order to "ensure the submission by the Collector of an accurate and complete descriptive list of all the relevant papers which may be required by the Court."

Service of notice.

20. The Court shall thereupon cause a notice, specifying the day on which the Court will proceed to determine the objection, and directing their appearance before the Court on that day, to be served on the following persons, namely :—

(*a*) the applicant ;

(*b*) all persons interested in the objection, except such (if any) of them as have consented without protest to receive payment of the compensation awarded ; and,

(*c*) if the objection is in regard to the area of the land or to the amount of the compensation, the Collector.

Clause (*b*). The object of the exception is not clear. If the objection relate to the right to receive compensation or to the apportionment of the compensation, persons who have consented without protest to receive payment of the compensation awarded (see section 31) may be interested in the objection. But the exception in this clause should probably be restricted, if at all, to those persons interested who have actually received payment without protest. By section 31 the Collector cannot make payment if there is any dispute as to the title to receive the compensation or as to the apportionment of it.

Restriction on scope of proceedings.

21. The scope of the inquiry in every such proceeding shall be restricted to a consideration of the interests of the persons affected by the objection.

22. Every such proceeding shall take place in open Court, and all persons entitled to practise in any Civil Court in the province shall be entitled to appear, plead and act (as the case may be) in such proceeding.

Proceedings to be in open Court.

23. (1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration—

Matters to be considered in determining compensation

first, the market-value of the land at the date of the publication of the declaration relating thereto under section 6;

secondly, the damage sustained by the person interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof;

thirdly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from his other land;

fourthly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, moveable or immoveable, in any other manner, or his earnings;

fifthly, if, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change; and

sixthly, the damage (if any) *bonâ fide* resulting from diminution of the profits of the land between the

time of the publication of the declaration under section 6 and the time of the Collector's taking possession of the land.

(2) In addition to the market-value of the land, as above provided, the Court shall in every case award a sum of fifteen per centum on such market-value, in consideration of the compulsory nature of the acquisition.

Sections 23—25 lay down the principles upon which compensation is to be awarded, the two first sections being applicable to the enquiry before the Collector (section 15), as well as to that before the Court. Section 23 enumerates six matters that are to be taken into consideration in awarding compensation ; section 24 enumerates seven matters that are not to be taken into consideration ; and section 25 prescribes certain rules limiting the amount of compensation in certain cases.

In considering these matters, the remark of Lord TRURO in *East and West India Docks and Birmingham Junction Rail. Co.* v. *Gattke*, 20 L. J., Ch. 217, should be borne in mind :—These Acts are to be liberally expounded in favour of the public, and strictly expounded as against the Government or Company taking the land.

(1.) *The market-value of the land.*

The market-value is the price which a willing vendor might be expected to obtain in the open market from a willing purchaser. "The recognised modes of ascertaining this market-value are :— (1) if a part or parts of the land taken up has or have been previously sold, such sales are taken as a fair basis upon which, making all proper allowances for situation, &c., to determine the value of that taken ; (2) to ascertain the net annual income of the land, and to deduce its value by allowing a certain number of years' purchase of such income, according to the nature of the property ; (3) to find out the prices at which lands in the vicinity have been sold and purchased, and making all due allowance for situation, to deduce from such sales the price which the land in question would probably fetch if offered for sale to the public." *In the matter of the Land Acquisition Act X of* 1870 ; *Munji Khetsey*, I. L. R., 15 Bom., 279 At the same time it is obvious that neither the cost of the same land to the owner, nor the price paid for similar land in the neighbourhood, can be more than a factor

in determining the value of the particular land taken. In England the value is generally proved by the evidence of experts who are acquainted with and speak to the conditions and capabilities of the actual land in suit. Auction-sales, as a rule, are not a fair test of the true market-value, the prices obtained being often far above or far below the real value of the property.

In *Premchand Burral and another* v. *The Collector of Calcutta*, I. L. R., 2 Cal 103, it was held that the fairest and most favourable principle of compensation to the owners was to enquire "what is the market-value of the property, not according to its present disposition, but laid out in the most lucrative and advantageous way in which the owners could dispose of it." In that case GARTH, C. J. (MACPHERSON J. concurring), said that to capitalize the present rental of the property at so many years' purchase was not always a fair way of arriving at the market-value. "When Government takes property from private persons under statutory powers, it is only right that those persons should obtain such a measure of compensation as is warranted by the price of similar property in the neighbourhood, without any special reference to the uses to which it may be applied at the time when it is taken by the Government, or to the price which its owners may previously have given for it. Of course, if it can be satisfactorily shown that the purposes to which the land is applied are as productive as any other to which it is applicable, or that the price given by the owners is its full market-value, it would be very just to assess the compensation upon that basis." It is submitted, however, that, in calculating the value of the land as laid out to the best advantage, the cost of so laying it out would have to be taken into consideration on the other side.

The principle laid down in the case just cited was approved in *The Collector of Poona* v. *Kashinath Khasgiwala*, I. L. R., 10 Bom. 585, where it was admitted that the most lucrative and advantageous way in which the owner could dispose of the land was by laying it out for building purposes. "The question then is, what would be its market-value if so laid out; and the most reliable evidence on that question must be the rates per square foot at which similar building sites in the neighbourhood have recently been sold."

Similarly in the case of *Munji Khetsey*, cited above, I. L R., 15 Bom. 279, it was held that in the neighbourhood of a town

where building is going on, it would be unfair to assess the value of the land upon its present income if there is a fair probability of the owner being able, owing to its situation, to sell or lease the land for building purposes.

In many parts of the country transfers of land are of unfrequent occurrence, and the rental forms the only basis on which the market-value can be ascertained. In such cases, the rental on which the calculation is based should be a rack-rent payable by tenants-at-will and not the rates payable by ryots with permanent or occupancy rights. The number of years' purchase at which it should be capitalized will depend on various circumstances, such as the locality and the demand for land, the prevailing rate of interest, and the price of Government securities. A purchaser of land even in the mofussil would probably expect to get at least five per cent. on his investment, while in the case of house-property, say in Calcutta, he would expect eight or ten per cent. to compensate him for the cost of repairs, rates and taxes, and the chance of the property lying unoccupied. "Every case must depend on its own circumstances, on the evidence given, and the nature of the property. The number of years' purchase, which it would be right to allow with regard to one sort of property, might not be a fair allowance for other kinds of property, and we wish to guard ourselves against being understood as laying down any rule as to the number of years' purchase which ought to be allowed"—*Heysham* v. *Bholanath Mullick*, 11 B. L. R., 236. In assessing the value of house-property situated in the town of Balsar, the Court awarded a capital sum which, at the rate of six per cent. per annum, would yield interest equal to the ascertained annual rental of the premises after deducting the amount necessarily expended for annual repairs—*Carey* v. *Banu Miya*; *Carey* v. *Kalu Miya*, 10 Bom. H. C. 34. See also *Collector of Hooghly* v. *Raykristo Mookerjee*, 22 W. R. 234.

In *The Secretary of State for India in Council* v. *Shanmugaraya Mudaliar*, L. R, 20 I A, 80; I. L. R, 16 Mad., 369, the Government were desirous of acquiring under the Act a certain granite hill on the sea beach in the vicinity of Madras, out of which are constructed the famous Seven Pagodas of Mahabalipuram; and the question arose as to the principle upon which the compensation should be assessed. The Privy Council held that the right, if not the only, course of proceeding was to estimate the rent at

which possibly the whole plot might be leased on the basis of how much rent a portion of the plot when leased for quarries had in fact obtained for the zemindar; and that the purchase-money might be properly calculated at twenty five years' purchase of such rent. It was also held that the temples and carvings had no market-value, as they never had been, and were never likely to be, a source of any income.

In *Hillcoat* v *Archbishops of Canterbury and York*, 10 C. B. 327, WILDE, C. J., observed that "the value was to be ascertained in relation to the situation of the property generally, and its applicability to ordinary purposes, discharged of any prescribed appropriation." But see *Stebbing* v. *Metropolitan Board of Works*, L. R., 6 Q. B., 37, where in a similar case of a churchyard being taken which had been closed under an order in Council it was held that the plaintiff was entitled to compensation only for the loss that he had sustained by being deprived of his interest in the churchyard, and not according to the value that the land would have for the defendants after they had acquired it.

At the date of the publication of the declaration under section 6.—This is an important change in the law. Under Act X of 1870 the market-value was to be ascertained as it stood at the time of awarding compensation, but this expression was not only vague (see remarks of FARRAN, J., in *Munji Khetsey*, I. L. R., 15 Bom., 279), but it often happens that the market-value varies considerably between the time when the declaration is published and the time when the acquisition is completed—in many cases simply in consequence of the proposed acquisition. The sixth clause of this section allows the Collector or Court to award compensation for damage (if any) *bonâ fide* resulting from diminution of the profits of the land between the time of the publication of the declaration under section 6, and the time of the Collector's taking possession of the land; but no increase in the profits during such interval can be taken into consideration in determining the market-value.

(2.) *Damage on account of standing crops or trees.*

This clause is new, and is rendered necessary by the fact that crops and trees may have been grown on the land after the date of the declaration. Of course if the Collector's offer of compensation under section 17, sub-section (3), is accepted, it will not be necessary to allow further compensation for the crops and trees at the time of the enquiry.

(3.) *Damage on account of severance.*

In this clause the words "at the time of the Collector's taking possession of the land" have been substituted for the words "at the time of awarding compensation."

By the construction of a railway part of an owner's land was taken and several acres were severed from the rest and all access cut off; the land was at the time the railway was constructed agricultural, but it had a prospective value for building—*Held*, that the jury, valuing it as building land, might estimate the damage by severance as if all access were cut off—*The Queen* v. *Brown*, L. R, 2 Q. B., 630.

In an appeal to the Calcutta High Court (301 of 1886, decided on 12th January 1888), *Kally Churn Ghose* v *Tarinee Churn Bose and the Clive Jute Mill Co.* (not reported), the facts were that a strip of land across the Company's premises was taken by a municipality for the purpose of constructing a road. At either end of this strip of land was a public roadway leading to it, and over the strip itself the public had acquired a right of way for foot passengers and animals, though not for wheeled traffic. The mill itself was separated from the strip by a wall which ran along the north of it; but the Company possessed some land south of the strip It was held that the Company was not entitled to any damages for severance over and above adequate compensation for the land actually taken. PETHERAM, C. J, said :—"The question here is one of actual damage because, under this Act, as also under the Acts which relate to matters of the same kind in England, compensation for injurious affection must be compensation for some actual injury which the claimant shows his other land not taken up under the Act has sustained by the works which are to be constructed upon it. The allegation here is that when the soil over which the old pathway runs, and which for the purpose of what I have to say must be admitted to have been the property of the claimant, has been acquired by the municipality, and a good road wider than the old road has been constructed upon the site of it, then the land on the southern side of it will be injuriously affected, because it will be severed from the rest of the compound. The first question then is, will it be severed from the rest in any different sense than what it was severed before. As I said before, it has always been severed by a wall which is the property of the claimant, and by the strip

of land which was also their property, but which was dedicated to the public as a highway in such sense that the claimants could not use the surface of it in any way inconsistent with the right of the public to use it as a highway at all times except for wheel. ed vehicles. It is clear in that state of things that they could, if they thought fit, take down the wall and lay the whole compound open, so that they may pass and repass across the pathway in any way they chose consistent with the right of the public to use it as a public road. But when one considers what the rights of the public are, the only right which the owners of the land could have, would be a right in common with the rest of the world to use it as a highway, that is to say, to use it to pass along it from one end to the other, and across it from one side to the other, so that the condition of things previous to the acquisition of the land by the municipality was that one side of the compound was divided by a pathway 8 feet wide which had to be maintained as a pathway and which could only be used by them for that purpose; and the condition of things when this piece of land has been acquired by the municipality and when a wider and better road has been constructed, will be that one side of the compound will be divided by a good road instead of a bad one. They will still have a right to take down the wall if they think fit, and will also have a right along with the public to pass along the road from end to end, and cross and recross it at any point they please. It has not been shown that any actual damage has been sustained, and the only damage that has been suggested is the possible one that some day the claimants may want to put up a tramway on this land, which possibly they might have done if it had continued a pathway, but which they cannot do now that it has been acquired by the Government. We do not think that is a sufficient ground for saying there is any evidence of any injurious affection whatever by the new works which it is proposed to construct."

(4.) *Damage by reason of the acquisition injuriously affecting the other property of the person interested, or his earnings.*

In this clause also the words "at the time of the Collector's taking possesion of the land" have been substituted for the words "at the time of awarding compensation."

In order that a person may be entitled to compensation under this clause, two conditions are necessary—

1st,—He must be a person interested in the land to be acquired:

2nd,—His *other* property, moveable or immoveable, or his earnings, must be injuriously affected by the acquisition.

By section 3, clause (*b*), a "person interested includes all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land." The term "interested in the land" is also used in section 9 and elsewhere in the Act, and seems to have the same meaning as interested in the compensation for the land. The matters for which compensation may be awarded are set out in section 23. Clauses (1), (2) and (6) of that section obviously relate to the land that is the subject of the acquisition, and the mention of "other land" and "other property" in clauses (3) and (4) seems to show that compensation can only be claimed under those clauses by a person whose land has been taken under the Act. In other words, it would seem that under this Act no person can claim compensation unless some land has been taken in which he claims an interest or over which he has an easement. He cannot claim compensation on the ground that his land has been injuriously affected by the acquisition, if no part of his land has been taken.

As is well known, this is not the law in England, where a person may under certain restrictions recover compensation if his land is injuriously affected by the acquisition even though no part of it is taken under the Statute. Section 63 of the Lands Clauses Consolidation Act, 1845, seems to contain the rule laid down in the Indian Act, but section 68 of the Statute has been construed as going much further. Section 63 runs as follows:—

"In estimating the purchase-money or compensation to be paid by the promoters of the undertaking in any of the cases aforesaid, regard shall be had by the justices, arbitrators or surveyors, as the case may be, not only to the value of the land to be purchased or taken by the promoters of the undertaking, but also to the damage, if any, to be sustained by the owner of the lands by reason of the severing of the lands taken from the other lands of such owner *or otherwise injuriously affecting such other lands* by the exercise of the powers of this or the special Act or any Act incorporated therewith." But section 68 of the Statute begins as follows:—"If any party shall be entitled to any com-

pensation in respect of any lands or of any interest therein, which shall have been *taken for or injuriously affected by the execution of the works*, and for which the promoters of the undertaking shall not have made satisfaction under the provisions of this or the special Act, &c" And section 6 of the Railway Clauses Consolidation Act, 1845, after extending the provisions of the Lands Clauses Consolidation Act, contains these words :—"And the Company shall make to the owners and occupiers of, and all other parties interested in, any lands taken or used for the purposes of the railway, *or injuriously affected by the construction thereof*, full compensation for the value of the lands so taken or used and for all damage sustained by such owners, occupiers and other parties by reason of the exercise, as regards such lands, of the powers vested in the Company." Under these clauses compensation is awarded for injury done to lands by the construction or execution of the works, even though no part of the lands has been taken. In considering the following cases, therefore, this distinction between the English and Indian Acts must be borne in mind The cases are given here as instances in which land has been held to have been "injuriously affected."

In *Eagle* v. *Charing Cross Railway Company*, L R., 2 C. P, 638, it was held that an easement is an interest in land for which compensation may be claimed under the Lands Clauses Consolidation Act In that case the plaintiff was awarded compensation for a diminution of light caused by the erection of the defendants' works, whereby the plaintiff's premises were rendered less convenient and suitable for the purposes of his trade.

So it was held that the owner of a house and shop adjoining a railway was entitled to compensation for damage sustained by him in consequence of the dust and dirt from the railway works having penetrated his shop and damaged his goods—*Knock* v. *Metropolitan Railway Co.*, L. R, 4 C. P., 131.

In *Beckett* v. *Midland Railway Company*, L. R., 3 C. P., 82, the defendants had erected an embankment on a portion of the highway opposite to the plaintiff's house, thereby narrowing the road from fifty to thirty-three feet, and thus diminishing the value of the house for letting or selling and obstructing the access of light and air to it : *Held*, that this was such a permanent injury to the estate of the plaintiff in the premises as to entitle him to compensation. See also *Reg* v. *St. Luke's*, L R., 7 Q B., 148.

So it was held that the claimant's house was injuriously affected when the public road immediately in front of it was lowered seven feet—*More* v. *Great Southern and Western Railway Co*, 10 Ir. C. L. R., 46; and similarly when the road was raised ten feet—*Tuohey* v. *Great Southern and Western Railway Co.*, 10 Ir. C. L. R, 98; *Reg.* v. *Eastern Counties Railway Co.*, L. R., 2 Q. B., 347. A farm was held to be injuriously affected by the cutting off of a stream that used to flow through it—*Little* v. *Dublin and Drogheda Railway Co*, 7 Ir. C. L. R, 82. So a wharf by the construction of a railway between it and the river—*Bell* v. *Hull and Selby Railway Co.*, 6 M. & W, 699. So where a colliery was inundated by the diversion of a brook—*R.* v. *North Midland Railway Co.*, 2 Rail. Cas. 1. In *Chamberlain's* case—a leading authority—a Railway Company made an obstruction and deviation in the public road so that a part of it which ran in front of some newly-built houses was less used as a thoroughfare than formerly, and the houses were thereby rendered less suitable for shops. It was held that they were injuriously affected, and that the owner was entitled to compensation—*Chamberlain* v. *West End of London and Crystal Palace Railway Co*, 31 L. J., Q. B. 201; 32 *ibid*, 173.

The owner of a ferry cannot maintain an action for loss of traffic caused by a new railway bridge and a footbridge made to provide for a new traffic—*Hopkins* v. *Great Northern Railway Co.*, L. R, 2 Q. B. D. 224.

In *Ripley* v *Great Northern Railway Company*, L. R., 10 Ch. 435, a Railway Company took land on which cotton mills would probably have been built, and the owner had other land on which he had built a reservoir from which water might be supplied to such cotton mills when built: *Held*, that evidence was properly taken as to the profits which might have been derived from supplying water to the mills when built, and that compensation was properly awarded for those profits.

In *The Caledonian Railway Company* v. *Ogilvy*, 2 Macq. Sc. App. 229, "a public road was, under the sanction of an Act of Parliament, crossed by a railway on a level, and gates were placed across the road; and it was held by the House of Lords that the owner of a house near the newly erected gates had no claim for compensation for the inconveniences occasioned to him. The owner of the house had no other right over the road than that which belonged to the public generally, and the erection of the

gates across the road where the railway crossed it upon a level was essential to the public safety It was doubtful whether the owner of the house sustained any injury different in kind, though it might be greater in degree, from that of the rest of the public; and therefore it was questionable whether he could have maintained an action if the obstruction had been created without the authority of Parliament. But in *Glover* v. *The North Staffordshire Railway Company*, L. R, 16 Q. B. 912, the plaintiff had a private way appurtenant to his farm, which was obstructed by the Company's works. His land, therefore, was injuriously affected, and as Mr. Justice Wightman said, supposing no Act of Parliament had passed, and that had been done which was done, an action would have been maintainable"—*Per* Lord CHELMSFORD in *Ricket* v. *The Metropolitan Railway Company*.

In *The Queen* v. *Metropolitan Board of Works*, L R., 4 Q. B. 358, "the occupier of premises near the Thames had been accustomed to exercise a public right of drawing water from the river and to use a right-of-way or access to the river for that purpose, and also to resort to and use a public draw dock for loading and unloading barges. In the execution of works authorized by the Thames Embankment Act, the defendants caused an embankment to be erected by which the access to the river was practically cut off, and the access to the dock by barges was attended with difficulty and danger. It was held that the damage complained of was one for which the occupier of the premises was not entitled to compensation; that the injury was of a personal nature, the right interfered with being one which he possessed in common with the public, though, living near, he exercised it more frequently than others. There can be no doubt that that case was properly decided, as there was nothing to show that the rights obstructed were in any peculiar manner connected with the claimant's premises, nor was there any finding that the premises were by the obstruction diminished in value. It is a case precisely similar to that of *The Caledonian Railway Company* v. *Ogilvy*"—*Per* Lord CHELMSFORD in *Metropolitan Board of Works* v. *McCarthy*.

In *Ricket* v. *Metropolitan Railway Company*, L. R, 2 H. L., 175, Lord CRANWORTH said :—"Both principle and authority seem to me to show that no case comes within the Statute unless when some damage has been occasioned to the land itself in respect of

which, but for the Statute, the complaining party might have maintained an action. The injury must be actual injury to the land itself, as by loosening the foundations of buildings on it, obstructing its light, making it inaccessible by lowering or raising the ground immediately in front of it, or by some such physical deterioration. Any other construction of the clause (section 68) would open the door to claims of so wide and indefinite a character as could not have been in the contemplation of the Legislature." In that case the plaintiff was the occupier of a public-house situated by the side of a public footway. In the exercise of their powers, the Railway Company had temporarily obstructed streets leading to this footway, so as to make the access to the public-house inconvenient, and the plaintiff claimed compensation in respect of the interruption to his business and injury to his trade consequent on those obstructions. None of the plaintiff's land had been taken.

In *The Queen* v. *Vaughan and Metropolitan District Railway Co.*, L. R., 4 Q. B. 190, it was held that the loss of custom to a public-house in consequence of the demolition of houses in the neighbourhood was not a proper subject of compensation.

So in *Bigg* v. *Corporation of London* (L. R., 15 Eq. 376), it was held that the plaintiff was not entitled to be compensated for the indirect injury to his trade resulting from the diversion of traffic caused by the authorized act of lowering the roadway, but only for direct structural injury occasioned by the unauthorized interference with his cellar.

In *Holt* v. *Gas Light and Coke Co*, L R., 7 Q. B. 728, a Volunteer Corps recovered compensation in consequence of the Company making a road through some meadows which lay behind the butts, and of which the plaintiffs had a lease, and thereby causing the stoppage of the rifle range.

In *The Metropolitan Board of Works* v. *McCarthy*, L. R., 7 H. L, 243, McCarthy was the lessor or occupier of a house in close proximity to a draw dock which opened into the Thames. He had no right in any way to the use of the dock except as one of the public; but his premises being in close proximity to it, his use of it for the purposes of his business was very constant. The dock was entirely destroyed by the works of the Thames Embankment. The case usbmitted to the Court stated "that by reason of the destruction of the dock and the destruction thereby of the

access to and from the Thames, the plaintiff's premises became and were as premises either to sell or occupy in their then condition, and with reference to the uses to which any owner or occupier might put them in their then state and condition permanently damaged and diminished in value." It was held that the plaintiff was on these facts entitled to compensation. Lord PENZANCE said :— "The right to compensation will accrue whenever it can be established that a special value attached to the premises by reason of their proximity to, or relative position with he highway obstructed, and that this special value has been permanently injured by the obstruction." He said that two rules had been established by previous decisions. One was "that whether damage can be recovered under the words '*injuriously affected*' depends upon whether it might have been the subject of an action if the works which caused it had been done without the authority of Parliament;" the other was "that the damage or injury which is to be the subject of compensation must not be of a personal character, but must be a damage or injury to the land of the claimant, considered independently of any particular trade that the claimant may have carried on upon it. This was decided in *The Queen* v. *Metropolitan Board of Works*."

Lord CHELMSFORD said :—"The learned counsel for the respondent proposed the following rule as a guide to the decision of each case : Where by the construction of works authorized by the Legislature there is a physical interference with a right, whether public or private, which an owner of a house is entitled to make use of in connection with the house, and which gives it a marketable value apart from any particular use to which the owner may put it, if the house by reason of the works is diminished in value, there arises a claim to compensation. I think the rule as thus stated may be accepted with this necessary qualification, that when the right which the owner of the house is entitled to exercise is one which he possesses in common with the public, there must be something peculiar to the right in its connection with the house to distinguish it from that which is enjoyed by the rest of the world."

Where an access to private property by a public highway or private way is interfered with by the construction of the works, and the value of the property, irrespective of any particular use that may be made of it, is so dependent upon the existence of that

access as to be substantially diminished by its obstruction, then the owner is entitled to compensation.—*Caledonian Railway Co.* v. *Walker's Trustees*, L. R., 7 App Cas., 259.

In *The Hammersmith and City Railway Co.* v. *Brand*, L. R., 4 H. L. Eng. and Ir. App., 171, it was held that a person whose land has not been taken for the purpose of a railway cannot recover compensation on account of damage or annoyance arising from the vibration caused by passing trains after the railway is brought into use, even though the property has been depreciated. So in regard to the noise and smoke caused by passing trains—*City of Glasgow Union Railway Co* v. *Hunter*, L. R, 2 H. L. Sc. 78; *Penney* v. *South-Eastern Railway Co.*, 26 L. J, Q B. 225. But in *The Duke of Buccleuch* v. *Metropolitan Board of Works*, L. R., 5 H L. 418, it was held that although compensation cannot be granted to a person annoyed by the smoke and vibration occasioned by trains passing along a railway constructed under the authority of an Act of Parliament when no part of his land has been taken, yet compensation may be given for deterioration in the value of his property occasioned in a similar manner where a part of his land has been taken.

In the same case it was also held that in this question of compensation may be considered a person's particular and individual use of that in which he has no particular right, such as the shore of a tidal river. The plaintiff was the owner of a house and garden on the bank of the Thames; he had had the use of a causeway which ran from his garden to low-water mark in the river and which was always repaired and kept in order by him; he was deprived of the use of this causeway and of his communication with the river by the embankment of the river and the formation of a road between it and the garden HANNEN, J. said:—"Plaintiff as owner of land abutting on a navigable river was entitled to a right of access to the stream along his whole frontage, and not merely at the spot where his jetty projected. If in the course of time it would have been advantageous to the plaintiff to use the whole of the land abutting on the Thames as a wharf or for any other purpose, he would have been entitled to do so, and anything which would permanently deprive him of that right of property would be the subject of an action if it were not authorized by Act of Parliament." MARTIN, B. said:—"Although he had not the soil of the bed of the river, he

had the easement or right or privilege (by whatever name it may be called) of the flow of the River Thames in its natural channel up to his garden wall. . . . And if any one had done an act injurious to the right to the flow of the water, he would have had a legal right of action against him." And Lord CAIRNS said : – "The property in this case was what is commonly called riparian property. The meaning of that is that it had a water frontage. The meaning of its having a water frontage was this, that it had a right to the undisturbed flow of the river which passed along the whole frontage of the property in the form in which it had been accustomed to pass. That being the state of things, this water frontage with these rights was taken for the purposes of the Act. Beyond all doubt the water-right was a property belonging to the plaintiff for which compensation was to be made."

So also Lord PENZANCE in *The Metropolitan Board of Works* v. *McCarthy* :—"The immediate contiguity to a highway commonly called frontage, is a well-known and powerful element in the value of all lands in populous districts. When frontage to a high road does not exist, propinquity and easy access to a high road are equally undoubted elements of value in such districts, distinguishing lands which have them from those which have them not. If, then, the lands of any owner have a special value by reason of their proximity to any particular highway, surely that owner will suffer special damage in respect of these lands beyond that suffered by the general public if the benefits of that proximity are withdrawn by the highway being obstructed. And if so, the owner of such lands appears to me to fall within the rule under which an action is maintainable, though the right interfered with is a public one."

And in *Lyon* v. *Fishmongers' Company*, L. R., 1 App. Cas., 662, Lord CAIRNS said :—"Unquestionably the owner of a wharf on the river bank has, like every other subject of the realm, the right of navigating the river as one of the public. This, however, is not a right coming to him *qua* owner or occupier of any lands on the bank, nor is it a right which *per se* he enjoys in a manner different from any other member of the public. But when this right of navigation is connected with exclusive access to and from a particular wharf, it assumes a very different character. It ceases to be a right held in common with the rest of the public, for other members of the public have no access to or from the river

at the particular place; and it becomes a form of enjoyment of the land, and of the river in connection with the land, the disturbance of which may be vindicated in damages by an action or restrained by an injunction. It is, as was decided in the cases to which I have referred (*Duke of Buccleuch* v. *The Metropolitan Board of Works; The Metropolitan Board of Works* v. *McCarthy*), a portion of the valuable enjoyment of the land, and any work which takes it away, is held to be an 'injurious affecting' of the land,—that is to say, the occasioning to the land of an 'injuria' or an infringement of right. The taking away of river frontage of a wharf, or the raising of an impediment along the frontage, interrupting the access between the wharf and the river, may be an injury to the public right of navigation; but it is not the less an injury to the owner of the wharf which, in the absence of any Parliamentary authority, would be compensated by damages or altogether prevented. It appears to me impossible to say that a right of enjoyment of land on the bank of a navigable river which is thus valuable and as to which a landowner can thus protect himself against disturbance, is otherwise than a right or claim to which the owner of land on the bank of the river is by law entitled within the meaning of such a saving clause as that which I have read."

In *Cowper-Essex* v. *Local Board for Acton*, L. R., 14 App. Cas., 153, the respondents took part of the appellant's land for sewage works, and the evidence showed that the existence of sewage works even if conducted so as not to create an actionable nuisance, depreciated the value of the appellant's other lands for building purposes. The land taken was separated from the other lands, in part by other property belonging to the appellant and in part by a railway. It was held (1) that part of the appellant's land having been taken, compensation might be awarded for damage sustained by reason of the injuriously affecting his other lands, not only by the construction of the sewage works but by their use; (2) that the damage was not too remote to form the subject of compensation, even though no nuisance might be caused; and (3) that the lands taken and the lands injuriously affected being held by the same owner so that the unity of ownership conduced to the advantage of the property as one holding, the lands injuriously affected were "held with" the land taken within the meaning of section 45 of the Lands Clauses Consolidation Act, 1845.

As regards certain modes in which an indigo factory was held to be injuriously affected by reason of the acquisition of certain of its lands, see *Taylor* v. *The Collector of Purneah*, I. L. R, 14 Cal. 423.

It will be observed that by the Indian Act compensation may be granted not only for injury to *land*, but also for injury to *moveable property* (see *Knock's case, ante*) as well as to earnings. But not for injury to the earnings of workpeople employed on the land. "No compensation is tendered by the Collector or ordered by the Act except to persons interested in the land. If the acquisition injuriously affects the earnings of the person interested, he is to obtain further compensation beyond the market-value of the land. But no compensation is given to persons not interested in the land on the ground that their earnings may be affected by the change of ownership, or indeed on any ground. The 46 quarrymen are no more interested in the land than a ploughman or a digger is interested in the land on which he works for wages. Nor are their earnings the earnings of the zemindar who is interested. The market-value of a property is not increased by the circumstance that a number of persons work on it and so earn their livelihood. That is no profit to the owner; it may be expense to him. And the award of the High Court has the extraordinary result of putting a large sum into the pocket of the Mudaliars on the ground that some of their neighbours will be injured by losing their employment"—*The Secretary of State for India in Council* v. *Shanmugaraya Mudaliar*, L. R., 20 I. A. 80; I. L R., 16 Mad. 369.

Both in England and in India it has been held that all damage which can be foreseen and is capable of being estimated at the time of awarding compensation, should be claimed and assessed once for all—*Croft* v. *London and North-Western Railway Company*, 32 L. J., Q. B. 113. In a subsequent suit for compensation, whether the damage could reasonably have been foreseen at the time of the acquisition, is a question of fact to be determined by the Court—*Tapidas Govindbhai* v. *The B B. and C. I. Railway Company*, 6 Bom. Rep., A. C. J. 116.

(5) *Expenses of removal.*

The words "or place of business" are new.

A proposal to add the words "and loss" after "expenses" was negatived by the Legislative Council on the ground that loss of

earnings or injury to moveable property in consequence of the removal may be taken into consideration under clause (4).

(6) *Damage for diminution of profits.*

This clause is new. It may happen that the proposal to acquire the land results in a diminution of the profits arising therefrom before possession is actually taken by the Collector, and in such a case the person interested is entitled to compensation for such diminution of profits. For instance, if it were proposed to acquire a row of shops or godowns and some of them were vacated and remained unlet in consequence of the intended acquisition, compensation might fairly be claimed on that account. But under the Lands Clauses Consolidation Act compensation on this ground was refused in *The Queen* v. *Vaughan and Metropolitan District Railway Company*, L. R., 4 Q. B. 190

Sub-section (2).—The additional allowance of 15 per cent. is only payable on the *market-value* of the land under clause 1 of sub-section (1), and not on any compensation that may be awarded under clauses 2 to 6 of that sub-section.

Matters to be neglected in determining compensation.

24. But the Court shall not take into consideration—

first, the degree of urgency which has led to the acquisition ;

secondly, any disinclination of the person interested to part with the land acquired ;

thirdly, any damage sustained by him which, if caused by a private person, would not render such person liable to a suit ;

fourthly, any damage which is likely to be caused to the land acquired, after the date of the publication of the declaration under section 6, by or in consequence of the use to which it will be put ;

fifthly, any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired ;

sixthly, any increase to the value of the other land of the person interested likely to accrue from the use to which the land acquired will be put; or,

seventhly, any outlay or improvements on, or disposal of, the land acquired, commenced, made or effected without the sanction of the Collector after the date of the publication of the declaration under section 6.

(1) *The urgency of the acquisition.*

By section 23, clause 1, the market-value of the property is to be awarded,—that is, the price which a willing purchaser might be expected to pay to a willing vendor for it. The Court is not to take into consideration any special value it may possess for the Government or for the purposes of the acquisition, nor, on the other hand, any special value it may possess for the owner (clause 2).

(2) *The disinclination of the owner to sell.*

This clause forbids the award of a 'fancy' price. The statutory allowance of 15 per cent. on the market-value under section 23, sub-section (2), is intended to compensate the owner for the compulsory nature of the acquisition. Further, a personal feeling or an unwillingness to sell is too vague and inappreciable an element in the transaction to be correctly valued in money. No compensation can be given for destroying a picturesque effect, or for interfering with a sentimental association, such as that attached to a ruin. Nor for annoyance to the amenities of a claimant's property—*Penny* v. *South-Eastern Railway Company*, 26 L. J., Q. B. 225; nor for mere personal inconvenience—*Caledonian Railway Company* v. *Ogilvy*, 2 Macq. 229 See also *Stebbing* v. *Metropolitan Board of Works*, L. R., 6 Q. B. 37.

In *The Collector of Poonah v. Kashinath Khasgiwala*, I. L. R., 10 Bom. 585, it was held that the grievance that offerings to idols in a temple would by reason of the acquisition of certain land have to be carried through the public street and would thereby lose their religious efficacy, was too sentimental to admit of any compensation being awarded for it. And, further, that no compensation could be awarded for the mere possibility of treasure-trove in the land.

(3.) *Damage which, if caused by a private person, would not be actionable.*

That is, the injury for which compensation is claimed must be an infringement of some right—not a mere *damnum absque injuria. Ex damno sine injuria non oritur actio.* This is one of the principles which the English Courts have adopted in awarding compensation. See the cases cited under section 23, clause 4, and in particular, *Ricket* v. *Metropolitan Railway Company; Metropolitan Board of Works* v. *McCarthy;* and *Duke of Buccleuch* v. *Metropolitan Board of Works.* See also *The New River Company* v. *Johnson*, 29 L. J., M. C, 93, in which it was held that the plaintiff was not entitled to compensation, because the Company, in the exercise of its statutory powers, constructed some underground works on their own land which drew off the water from plaintiff's well. So, where the tenant of a public-house claimed compensation for the loss of profits he had sustained by reason of a Railway Company having pulled down the adjoining houses, it was held that he was not entitled to compensation; for if any private person had purchased and pulled down the adjoining property, no action would have lain against him—*Reg.* v. *Vaughan*, L. R., 4 Q. B. 190; 38 L. J., M. C. 49. So, where by the obstruction of a public thoroughfare, injury was occasioned to the plaintiff's business—*Herring* v. *Metropolitan Board of Works*, 34 L. J., M. C. 224. See also Lord CAMPBELL's remarks in *Penny* v. *South-Eastern Railway Company*, 26 L. J., Q. B. 225; and *Rhodes* v. *Airedale Drainage Commissioners*, L. R., 1 C. P. C. 380, 402.

"The object of this provision is to exclude vexatious claims which might be made on account of trifling inconveniences caused during the progress of the works." *Speech of Mr. Strachey.*

As regards the infringement of rights naturally incident to the possession and ownership of land, see Addison on Torts, chap. 2.

(4) *Damage likely to be caused to the land acquired by or in consequence of the use to which it will be put.*

This clause was somewhat indefinite in Act X of 1870, but has now been made clear. It has reference only to damage caused to the land acquired, and not to any other land.

"The Bombay Government have pointed out the difficulty of discriminating accurately between clause (3) of section 24 and clause (4) of section 25 of the present Act (X of 1870). The former permits to be taken into consideration in an award of compen-

sation any damage sustained by reason of the acquisition injuriously affecting other property of the owner. The latter excludes from consideration any damage caused by the use to which the land acquired will be put, and it was contended that under the latter clause it was doubtful whether an owner could be compensated for the damage caused to the rest of a building-site by the construction on part of it of a public latrine. We think that even as the Act at present stands, there is no doubt of the right of the owner to compensation for damage of this sort; but we have so altered clause (4), section 24 of the Bill, as to make it quite clear that we exclude from compensation only a possible depreciation of the acquired land itself from the use to which it will be put; that is to say, if garden lands are appropriated for a latrine, the owner will get compensation as for garden lands without reference to the lower value they will subsequently have." —*Select Committee's Report, dated* 22*nd March* 1893.

Any damage can and must be taken into account which can be clearly foreseen as arising out of the purpose for which the land is declared to be needed and acquired—*Tapidas Govindbhai* v. *The B B & C. I Railway Co.*, 6 Bom. Rep., A. C. J. 116. The leading case on the subject is that of *Lee* v *Milner*, 2 M. & W. 824, in which it was held, that "the jury have no right to assess prospective damages except after an *example* of damage has actually occurred. The cause of injury must exist in some work of the Company which is then already done, and that work must be in such a state as to be incapable of further alteration so as to obviate the damage." As Mr. Strachey said :—"Any person interested in the property might at any future time recover by suit compensation for any damage which could not be foreseen when the property was taken. All that was intended was that, in fixing the value at the time of taking the property, the official valuers should not take into consideration purely speculative or imaginary damages."

In *Hammersmith and City Railway Company* v. *Brand*, L. R., 4 H. L., Eng. and Ir. App. 171, it was held that compensation could only be given under the Lands Clauses Consolidation Act for damage done in the construction of the works, and not for damage done afterwards when the works are completed and being used in the exercise of the statutory powers. Accordingly, compensation was refused which had been claimed on the ground

of the vibration caused by the passing of trains whereby the the plaintiff's property was depreciated. So in regard to the noise and smoke caused by the passing of trains—*City of Glasgow Railway Company* v. *Hunter*, L R., 2 H L Sc., 78. But, although compensation may not be granted to a person annoyed by the smoke and vibration caused by trains passing along a railway constructed under an Act of Parliament when no part of his land has been taken, compensation may be given for deterioration in the value of his property occasioned in a similar manner when a part of his land has been taken for the construction of the work—*Duke of Buccleuch* v. *Metropolitan Board of Works*, L. R., 5 H. L. 418.

(5.) *Increase to the value of the land acquired from the use to which it will be put.*

In *Stebbing* v. *Metropolitan Board of Works*, L R., 6 Q. B. 37, it was held that a churchyard which had been closed and was practically valueless could not be assessed at the value it would have for the purpose for which it was taken under the Act.

(6.) *Increase to the value of other land from the use to which the land acquired will be put.*

In *Eagle* v. *Charing Cross Railway Company*, L. R., 2 C. P. 638, it was held that the fact that, notwithstanding the diminution of light, the saleable value of the plaintiff's interest in the premises, had not been diminished (the value of the property in the neighbourhood generally having become greatly enhanced by reason of the Company's works) was no answer to the claim for compensation. So in *Senior* v. *Metropolitan Railway Company*, 32 L. J., Exch. 225, it was held, that the Company had no right to set off an ultimate possible benefit accruing to the premises of the person interested or to the neighbourhood in consequence of the construction of the railroad against the present pecuniary loss caused by the execution of the work.

(7) *Outlay on, or disposal of, the land acquired without the sanction of the Collector.*

This clause has been recast. Under Act X of 1870 no compensation could be awarded for any outlay or improvements made on the land with the intention of enhancing the compensation to be awarded therefor. By the clause as now amended the Court is debarred from taking into consideration any outlay or improvements on, *or disposal of*, (the words in italics are new) the land

acquired which has been commenced, made or effected after the publication of the declaration under section 6, unless such outlay, &c, has been sanctioned by the Collector

The Collector here, as in section 5, probably means the chief revenue-officer of the district.

In England, where the owner of property, after a notice to treat had been served on him, entered into an agreement with a person who had for several years occupied part of the property as a weekly tenant for a lease of the same to him for a term of three years, it was held that the tenant was not entitled to compensation in respect of the interest created by such agreement—*In re Marylebone (Stingo Lane) Improvement Act Ex parte Edwards*, L. R., 12 Eq. 389. And where a landowner built on land after a notice to treat, it was held that he could not compel the Company to take the house under section 92 of the Statute—*Littler v. Rhyl Improvement Commissioners*, W. N. (1878) p. 219.

Rules as to amount of compensation.

25. (1) When the applicant has made a claim to compensation, pursuant to any notice given under section 9, the amount awarded to him by the Court shall not exceed the amount so claimed or be less than the amount awarded by the Collector under section 11.

(2) When the applicant has refused to make such claim or has omitted without sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded by the Court shall in no case exceed the amount awarded by the Collector.

(3) When the applicant has omitted for a sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded to him by the Court shall not be less than, and may exceed, the amount awarded by the Collector.

The rules laid down in this section limit the amount of compensation in three cases, *viz.*:—

(*a*) *When the applicant has made a claim*—in which case the amount awarded shall not exceed the amount so claimed, or be less than the amount awarded by the Collector. This is the ordinary rule of the Civil Courts.

(*b*) *When the applicant has refused to make a claim, or omitted to do so without sufficient reason.* In this case, the amount awarded shall in no case exceed the amount awarded by the Collector.

(*c*) *When the Judge thinks there was sufficient cause for such omission*—in which case the amount awarded shall not be less than, and may exceed, the amount awarded by the Collector.

In case (*b*) under Act X of 1870 the amount awarded might be less than the amount tendered by the Collector.

Form of awards.

26. Every award under this Part shall be in writing signed by the Judge, and shall, specify the amount awarded under clause *first* of sub-section (1) of section 23, and also the amounts (if any) respectively awarded under each of the other clauses of the same sub-section, together with the grounds of awarding each of the said amounts.

The amount awarded under the first clause of section 23, sub-section (1), is to be specifically mentioned because it is on that amount that the statutory allowance under sub-section (2) is to be calculated.

Costs.

27. (1) Every such award shall also state the amount of costs incurred in the proceedings under this Part, and by what persons and in what proportions they are to be paid.

(2) When the award of the Collector is not upheld, the costs shall ordinarily be paid by the Collector, unless the Court shall be of opinion that the claim of the applicant was so extravagant or that he was so negligent in putting his case before the Collector that some deduction from his costs should be made or that he should pay a part of the Collector's costs.

There being no stamp-duty on the claim (Court-Fees Act, VII of 1870, section 19, clause xii), the costs will mainly consist of the pleaders' fees, witnesses' expenses and process fees. As regards the pleaders' fees, the Calcutta High Court has made the following rule under the Legal Practitioners' Act:—

"In this and the following rules cases under Part III of the Land Acquisition Act of 1870, shall be deemed to be suits, and

the fees allowable therein may be calculated either on the amount of compensation decreed in excess of the sum tendered by the Collector, or on any smaller amount which the Court in its discretion may think proper. In the event of the sum tendered by the Collector being decreed, pleaders' fees may be awarded to Government on the difference between that sum and the sum claimed, or on any smaller amount which the Court in its discretion may think proper : Provided that, in any case in which the remuneration under the above rules shall, in the opinion of the Judge, prove to be insufficient, or in any case not provided for, he shall be at liberty to allow pleaders' fees, as in miscellaneous cases under Rule 8."

There is no appeal against the order in the award as to costs.

"The Judge is to determine the amount of costs incurred by either party in the same way as it is done in suits by the taxing officer."—*Per* COUCH, C. J., *Bamasoonderee Dossee* v. *Verner*, 13 B. L. R., 189 ; 22 W. R. 136.

The rule here laid down is, of course, subject to special arrangement, as where the Court grants a postponement on an understanding that one or other party pay the costs thereof.

The award is not chargeable with stamp-duty, and any party claiming under it is entitled to a copy free of charge (section 51).

Collector may be directed to pay interest on excess compensation.

28. If the sum which, in the opinion of the Court, the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the award of the Court may direct that the Collector shall pay interest on such excess at the rate of six per centum per annum from the date on which he took possession of the land to the date of payment of such excess into Court.

Interest is not payable on the amount of the Collector's award which is paid either to the parties or into Court under section 31, but only on any excess over that amount which may be awarded by the Court. But by section 34 if the amount of the Collector's award is not paid or deposited on or before he takes possession, that amount will carry interest from the date of taking possession to the date of payment or deposit.

PART IV.

APPORTIONMENT OF COMPENSATION.

Particulars of apportionment to be specified.

29. Where there are several persons interested, if such persons agree in the apportionment of the compensation, the particulars of such apportionment shall be specified in the award, and as between such persons the award shall be conclusive evidence of the correctness of the apportionment.

The award spoken of in this section may be either that made by the Collector under section 14, or that made by the Court under section 34.

"*As between such persons.*"—But it will not, of course, bind persons who are not before the Collector or the Court making the award.—*Hurmutjan Bibi* v. *Padma Lochan Das*, I. L. R., 12 Cal. 33.

Dispute as to apportionment.

30. When the amount of compensation has been settled under section 11, if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof is payable, the Collector may refer such dispute to the decision of the Court.

Under this section, when there is a dispute (1) as to the apportionment of the compensation, or (2) as to the persons who are entitled to it, the Collector *may*, instead of deciding the dispute himself under section 11, refer it to the Court for decision. Under Act X of 1870 the Collector had no power to decide such disputes.

The corresponding section of Act X of 1870 was silent as to disputes regarding title, but in *Kashim* v. *Aminbi and the Collector of Belgaum*, I. L. R., 16 Bom. 525, it was held that the term "apportionment" should be given a liberal construction as including the case where the Court has to decide between rival claimants to the entire compensation.

As to the effect of a decision under this section, see *Raja Nilmoni Singh Deo* v. *Rambandhu Roy*, L. R., 8 I. A. 90; I. L. R.

4 Cal. 757 ; 7 Cal. 388 ; and *Nobodeep Chunder Chowdhry* v. *Brojendro Lal Roy*, I L. R, 7 Cal. 406. And see note on section 31, sub-section (2), proviso (iii), *post.*

The following decisions deal with the principles on which the apportionment of the compensation-money should be made between the zemindar and the various subordinate tenure-holders and others. It will be seen that the decisions are not always consistent or reconcileable with each other. The subject has been very fully and carefully treated in an article in the *Calcutta Review* for 1889, vol. 88, p. 291, which will well repay study. The leading case on the subject is that of *Srinath Mookerjee and others* v. *Maharajah Mahtap Chand Bahadoor*, S. D. A. 1860, 326, in which the late Sudder Dewany Adawlut said :—"The zemindar and the putneedar are entitled to compensation in proportion to the losses they respectively sustain from the appropriation of their lands and to the remission of the rents which they pay respectively to the Government or the zemindar. . . . . The proper principle we consider to be as follows :— In respect to remission, as the gross rental of the whole putnee is to the gross rent of the land proposed to be taken, so will the entire putnee rent be to the particular portion of the rent to be remitted ; and, with regard to compensation, the principle may most conveniently be stated as follows,—as the gross profit of the putnee is to the profit of the putneedar, so will the gross compensation be to the portion of the compensation the putneedar is entitled to recover. These formulæ are of universal application, and will enable any one hereafter to adjust the remission and compensation between zemindar and putneedar without difficulty in any case that may arise." So in *Gordon Stuart & Co.* v. *Maharajah Mohatab Chunder Bahadoor*, Marshall, 490, it was held that where lands are taken compulsorily, the principle upon which the amount of compensation is divisible amongst the zemindar and the holders of the several subordinate tenures, is to ascertain the value of the interest of each holder of a tenure and to give him a sum equivalent to the purchase-money of such interest. But the principle laid down in the Sudder Dewany Adawlut case is not applicable to the case of several putnees subordinate to one another, where the land is taken from the holder of the last tenure and where the grantors of the several intermediate tenures have received a sum of money as a bonus for the grant.—

Maharajah Mahtap Chand Bahadoor v. *Bengal Coal Company and others*, 10 W. R. 391. In another case, where by the calculation of the plaintiff (a dur-putneedar) a more favourable result was secured to the zemindar than that for which he himself contended, it was held to be unnecessary to go into the proper principle on which the compensation should be apportioned.—*Bengal Coal Company* v. *Maharajah Mahtap Chand Bahadoor*, 12 W. R. 340. A putneedar is entitled to compensation, though there may be no agreement to that effect.—*Joykissen Mookerjee* v. *Reazoonissa Beebee*, 4 W. R 40. The party *primâ facie* entitled to the compensation is the proprietor; any party claiming against him by virtue of a right derived from him (*e.g.*, mokurrareedar) is bound to prove the right he pleads.—*Issur Chunder Banerjee* v. *Sattyo Dyal Banerjee*, 12 W. R. 270.

In a suit between a putneedar and a zemindar for apportionment of compensation-money in deposit with the Collector under Act VI of 1857, COUCH, C. J., said :—"The compensation ought to be apportioned between the parties according to the value of the interest which each of them parts with. The zemindar has a right to the fixed rent, and the loss he sustains is of so much of his rent. Any other possible injury, such as the chance of the putneedar throwing up the land, and its being diminished in value by what has been taken by Government and still remaining, as it did, liable to pay the same revenue, is, we think, not appreciable and cannot be taken into account. If there is no abatement of the rent and the putneedar continues liable to pay to the zemindar the same rent as he had to pay before, there would be nothing for which the zemindar ought to receive compensation. He would be in the same position as before, except with reference, as we have said, to the possibility of a loss which is scarcely appreciable. But the proper mode of settling the rights of the parties is to give to the putneedar an abatement of his rent in proportion to the quantity of land which has been taken from him. It is not fair that he should be liable to pay the same rent when a part of the land has been taken away. The decision of the Judge that the plaintiff is entitled to an abatement of the rent is correct, and is in accordance with the principle laid down in the case of the Maharajah of Burdwan. This being so, the zemindar ought to be compensated for the loss of rent which he sustains, and the money ought to be divided between the parties

accordingly. The putneedar's getting an abatement of his rent is to be taken into account as partly the way in which he is compensated for the loss of the land."—*Raye Kissory Dassee* v. *Nilcant Day*, 20 W. R. 370.

On the other hand, see the remarks of GARTH, C. J, in *Godadhar Dass* v. *Dhunput Sing*, I L R., 7 Cal 585 :—"As regards the zemindar, it is a mistake to suppose that his interest in the land is confined entirely to the rent which he receives from the putneedar. He is the owner of it under the Government; and in the event of the putnee coming to an end by sale, forfeiture or otherwise, the property would revert to the zemindar, who might deal with it as he pleased in its improved state; and although in some cases the chances of the putnee coming to an end may be more or less remote, there is no doubt that in all cases the zemindar is entitled to some compensation (small though it be) for the loss of his rights. At any rate he would generally be entitled to receive as much as the putneedar." In *Bunwari Lal Chowdhry* v. *Burnomoyi Dasi*, I. L. R., 14 Cal. 749, the District Judge, acting on the above principle, had decreed that the compensation should be divided equally between the zemindar and the putneedar, and the putneedar contended in appeal that, inasmuch as he had received no abatement of his rent, he was entitled to the entire compensation. The Court said :—"It seems to us that no general principle can be laid down applicable to every case as between zemindar and putneedar. In the present case we must take it that the putneedar is the person to whom the ryots directly paid their rents. The apportionment between the zemindar and the putneedar will depend partly on the sum paid as bonus for the putnee and the relation that it bore to the probable value of the property, and partly on the amount of rent payable to the zemindar, and also the actual proceeds from the cultivating tenants or under-tenants. It may occasionally happen that the zemindar receives an extremely high bonus, and is content with charging the property with the receipt of a very low rate of rent, or it may be that the bonus is almost nominal and the rent is excessively high, and the zemindar depends not on the bonus and the interest of the amount so paid and invested in some other way, but on the amount paid periodically as rent; and consequently as between parties standing in these relations it is necessary to consider all these matters before any conclusion

can be arrived at as to their rights to any particular compensation." It is open to question, however, whether in any case where the zemindar has granted a putnee or other permanent saleable under-tenure, he ought to be held to be entitled to more than the capitalized value of a proportionate share of the rent he receives from his under-tenant, and that only if he has granted an abatement of the rent. The receipt of a high bonus is nothing more than the receipt in anticipation of a portion of the rent capitalized In two cases (appeals from original decrees, 271 and 272 of 1885, not reported), where the land taken had been let in a permanent under-tenure, and no abatement of the rent had been granted, the Calcutta High Court held that the under-tenant was entitled to the entire compensation

Where a putneedar has taken the whole amount of the compensation without claiming any abatement of rent, a subsequent purchaser of the putnee is not at liberty to re-open the question and to sue for abatement.—*Peari Mohan Mukerjee* v. *Audhiraj Aftab Chand*, 10 C. L. R. 526.

Where land had been granted for building purposes, the High Court of the N. W. P. held that the grantee was entitled to the bulk of the compensation for the land as well as to that for the buildings, the zemindar having at most a reversionary interest. —*Gur Parshad* v. *Umrao Singh*, 7 N. W. P. Rep. 218.

A ryot with a right of occupancy is entitled to share in the compensation. "The parties who usually suffer most from lands being taken for Government purposes are either the ryots with right of occupancy or the holders, whoever they may be, of the first permanent interest above the occupying ryots. The actual occupier is, of course, turned out by the Government, and if he is a ryot with a right of occupancy, he loses the benefit of that right, besides being driven possibly to find a holding and a home elsewhere; and the holder of the tenure immediately superior to the occupying ryots, whatever the nature of the holding may be, loses the rent of the land taken during the period of his holding. These two classes, therefore, would, generally speaking, be entitled to the larger portion of the compensation."—*Per* GARTH, C. J., in *Godadhar Dass* v. *Dhunput Sing*, *ante*.

Similarly, the Madras High Court held that no definite rule could be laid down as to the rights of the tenants called "ulkudi sukhavasis" but that they had a qualified interest in the soil,

and where their land was taken under the Act, they were clearly entitled to compensation for the loss of their interest. In ascertaining the proportionate interest of the mirasidar and ulkudi tenant, allowance must be made for the mirasidar's reversionary right; and when the rights of the parties are calculated on the basis of the value of the produce, allowance must be made for the expenses of cultivation.—*Appasari Modali* v. *Rangappa Nattan*, I. L. R., 4 Mad. 367.

In a case not reported (appeal from original decree 477 of 1885), the Calcutta High Court first deducted the value of the rent at 15 years' purchase, and awarded it to the landlord or the ryot with right of occupancy according as there was or was not an abatement of the rent, dividing the balance of the compensation between them. And this method was followed in *Mohendra Nath Bose* v. *Mohini Bewa* (appeal from original decree No. 311 of 1886 not reported), and in *A. M. Dunne* v. *Nobo Krishna Mookerjee*, I. L R, 17 Cal. 144.

In *Bhageeruth Moodee* v. *Rajah Jabur Jummah Khan*, 18 W. R. 91, it was held that, as under Regulation XXIX of 1814, the zemindar retains an interest in ghatwalli lands, he is entitled to share in the compensation, and in that case he was allowed a one-fourth share. But in a subsequent case it was held, that neither the zemindar nor the under-tenants of the ghatwal could claim a share, but that the compensation-money carried with it all the incidents of the original ghatwalli tenure, and the ghatwal for the time being was entitled only to the interest accruing therefrom during his lifetime—*Ram Chunder Singh* v. *Raja Joher Jumma Khan*, 14 B. L. R, App. 7; 23 W. R. 376.

Where the land taken was an accretion to a *mourusi* and *mukarrari* tenure, it was held that, in the absence of special circumstances, the rent of the accreted land must be taken to be proportionate to that of the original tenure, and that the landlord was entitled to the value of such rent *plus* 15 per cent., the balance of the compensation being given to the tenant.—*Chooramoni Dey* v. *Howrah Mills Co. Ld.*, I. L. R., 11 Cal 696.

Abatement of rent.—In *Gordon Stuart & Co* v. *Maharajah Mohatab Chunder Bahadoor and others*, Marshall, 490, it was held that abatement of rent could not be claimed in a suit to recover compensation under the former procedure, such a claim being cognizable only in a suit under Act X of 1859, s. 18. But such a

claim may be made by way of set-off in a suit for arrears of rent.—*Deen Dyall Lall* v *Mussamut Thukroo Koonwar*, 6 W. R., Act X, Rul. 24; even though the pottah may not provide for a remission of the kind, and the superior holder has not obtained a similar benefit from the zemindar.—*Mohesh Chunder Dutt* v. *Gungamony Dossee and others*, 2 Hay 495. But the abatement claimed must be reckoned with reference not to the gross amount of compensation, but to the proportion which passes into the hands of the superior holder.—*Maharajah Dheraj Mahtab Chand Bahadoor* v. *Chittro Coomaree Bibee*, 16 W. R. 201.

Under the present law, the practice is to grant abatement of rent in the same proceedings in which the compensation is apportioned. Indeed, in many cases, a share of the compensation can only be allowed to the superior tenure-holders on the condition of an abatement of the rent. So in regard to the capitalized Government revenue which is often claimed as belonging to the zemindar. A little consideration will show that the capitalized value of the Government revenue is only a part of the total compensation and must be treated as such; and when there are permanent under-tenures, the zemindar is not entitled to that or any other part of the compensation, unless he agrees to make a corresponding reduction in the rent. The Judge "will do wisely to make the parties come to some arrangement as to the abatement."—*Godadhur Dass* v. *Dhunput Singh*, *ante*.

It was ruled by the Madras High Court that a Judge appointed under section 3 to perform the functions of a Judge under the Act within the local limits of the ordinary original jurisdiction of the High Court has no power to award costs under this section. "The jurisdiction being of a special nature and exercised under a special enactment, must be strictly confined within the limits given by the statute."—*Ramenjem Naidoo* v. *Rangiah Naidoo*, 8 Mad H. C. 192.

PART V.

PAYMENT.

Payment of compensation or deposit of same in Court.

31. (1) On making an award under section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award,

and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next sub-section.

(2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court to which a reference under section 18 would be submitted :

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount :

Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application under section 18 :

Provided also that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.

(3) Notwithstanding anything in this section, the Collector may, with the sanction of the Local Government, instead of awarding a money compensation in respect of any land, make any arrangement with a person having a limited interest in such land, either by the grant of other lands in exchange, the remission of land-revenue on other lands held under the same title, or in such other way as may be equitable having regard to the interests of the parties concerned.

(4) Nothing in the last foregoing sub-section shall be construed to interfere with or limit the power of the Collector to enter into any arrangement with any person interested in the land and competent to contract in respect thereof.

Sub-section (1).—On making an award under section 11, the Collector is bound to tender the amount of compensation to the persons who are entitled to receive it according to his award, and he is further bound to pay it to them except in the four cases mentioned in sub section (2).

Sub-section (2) —These four cases are—

(*a*) If they do not consent to receive it.

(*b*) If there is no person competent to alienate the land. See definition of "entitled to act" in section 3, clause (*g*), proviso (iv).

(*c*) If there is any dispute as to title.

(*d*) If there is any dispute as to the apportionment of the compensation.

In these four cases the Collector is to deposit the amount in the Court, and no interest will be payable upon it.

This sub-section is, however, subject to three provisoes—

Proviso (i).—Any person who is admitted to be interested, that is to say, whose right to receive the compensation or any part thereof is undisputed, may receive it under protest as to the sufficiency of the amount; in other words, he may take the sum awarded, reserving to himself the right to prefer an objection under section 18 as to the amount of the compensation.

Proviso (ii).—If, however, such a person receives payment of the amount awarded without protest, he is debarred from preferring any objection under section 18.

Proviso (iii).—Receipt of the compensation or any part thereof from the Collector, while operating as a full discharge to that extent so far as the Collector is concerned, will not absolve the recipient from liability to pay the same to any person lawfully entitled thereto, that is to say, who may prove a better title to it.

Sub-section (3) empowers the Collector, with the sanction of the Local Government, to adjust the compensation otherwise than by a money-payment with a person having a limited interest in the land, such as a Hindu widow, the *shebait* of *debutter* property, or the *mutawali* of *waqf* property. Such an arrangement may be effected either by—(*a*) the grant of other lands in exchange; (*b*) the remission of land-revenue on other lands held under the same title, or (*c*) in such other way as may be equitable having regard to the interests of the parties concerned.

Sub-section (4).—But the powers given by sub-section (3) are not to be construed as interfering with or limiting the power which the Collector has to enter into any arrangement with any person interested in the land who is competent to contract in respect of it.

For an instance of the grant of other lands in exchange instead of a money compensation, see the case of *Narayana* v. *Ramchandra*, I. L. R., 13 Mad. 485.

Proviso (iii).—It has been held that any person who is a party to the proceedings under this Act is precluded from bringing a regular suit for the whole or any part of the compensation.—*Raja Nilmoni Singh Deo Bahadur* v. *Ram Bandhu Rai*, L. R., 8 I. A. 90; I. L. R, 7 Cal. 388; 10 C. L. R. 393. In that case, their Lordships of the Privy Council said:—"Such a proviso, which appears to have been but a repetition of a provision in a previous Act *in pari materiâ*, is necessary in this, as in almost all Acts of a similar character. It is necessary for the Government, or the persons or Company entitled to take the property compulsorily, to deal with those who are in possession or ostensibly the owners; but it may happen, and frequently does happen, that the real owners, possibly being infants or persons under disability, do not appear and are not dealt with in the first instance; and therefore a provision of this sort is necessary for the purpose of enabling the parties who have a real title to obtain the compensation-money. . . . . The proviso applies only to persons whose rights have not been adjudicated upon in pursuance of sections 38 and 39 (of Act X of 1870, corresponding with sections 29 and 30 of this Act), and it has not the effect, which it would certainly not be reasonable to attribute to it, of permitting a person whose claim has been adjudicated upon in the manner pointed out by the Act to have that claim re-opened and again heard in another suit. Their Lordships are of opinion that the provisions in this Act for the settling of compensation are intended to be final; and that the amount and distribution of the compensation having been settled in this case by a competent Court, and the decision not having been appealed against, the settlement is final, and the present suit cannot be maintained." See also the judgment of the High Court in the same suit, I. L. R., 4 Cal. 757; 3 C. L. R. 210. But the proviso will apply to a person who, though served with notice under section 9, was no party to the apportionment proceedings. Under Act X of 1870 it was held that the apportionment of the compensation under section 39 is intended to be a proceeding distinct from that of settling the amount of compensation under the previous provisions of the Act, and any dispute as to the apportionment is only decided as between those

persons who are actually before the Court. A separate notice therefore of the apportionment proceedings is requisite to bind any person by those proceedings, and where such a notice has not been served, any party interested, although served with notice of proceedings for settling the amount of compensation, cannot be considered a party to the proceedings for apportioning it.—*Hurmatjan Bibi* v. *Padma Lochun Das*, I. L. R, 12 Cal. 33. "Where money has been paid into Court by reason of real estate having been taken under the compulsory powers and remains in Court, it is to be held as personal estate in the hands of the Court impressed with the trusts of real estate."—*Per* STUART, V C, *In re Stewart's Trusts*, 22 L J. (N. S.) 369. And therefore where the land had been mortgaged it was held that the mortgagee had a right to recover the compensation awarded for it.—*Viraragava* v. *Krishnasami*, I. L. R., 6 Mad. 344. See also *Chomu* v. *Umma*, I. L R, 14 Mad 46.

A suit to recover the money is not a suit to establish a right to or interest in immoveable property under section 16 (*d*) of the Code of Civil Procedure, and it is not necessary therefore that the suit should be instituted in the Court within the local limits of whose jurisdiction the immoveable property is situate — *Viraragava* v. *Krishnasami*, I L R, 6 Mad. 344.

Government took for public purposes a quantity of land which included 4 cottahs leased by *M* to plaintiff as the site of an iron foundry. Proceedings were duly taken under Act VI of 1857, in which plaintiff did not appear. Five years afterwards he sued to recover compensation for having been turned out of his holding and deprived of the machinery, &c, of his foundry. *Held*, that *M* as lessor was not answerable for the plaintiff's eviction, and that there was no evidence to show either that plaintiff's property was valued by the arbitrators or at what amount. "We are therefore quite unable to arrive at any judgment as to the aliquot part of the whole compensation and purchase-money which is attributable to the plaintiff's share of the property."—*Minto* v. *Kalee Churn Dass*, 8 W. R. 327.

Investment of money deposited in respect of lands belonging to persons incompetent to alienate.

32. (1) If any money shall be deposited in Court under sub-section (2) of the last preceding section and it appears that the land in respect whereof the same was awarded

belonged to any person who had no power to alienate the same, the Court shall—

(*a*) order the money to be invested in the purchase of other lands to be held under the like title and conditions of ownership as the land in respect of which such money shall have been deposited was held, or

(*b*) if such purchase cannot be effected forthwith, then in such Government or other approved securities as the Court shall think fit ;

and shall direct the payment of the interest or other proceeds arising from such investment to the person or persons who would for the time being have been entitled to the possession of the said land, and such moneys shall remain so deposited and invested until the same be applied—

(*i*) in the purchase of such other lands as aforesaid ; or

(*ii*) in payment to any person or persons becoming absolutely entitled thereto.

(2) In all cases of moneys deposited to which this section applies the Court shall order the costs of the following matters, including therein all reasonable charges and expenses incident thereto, to be paid by the Collector, namely :—

(*a*) the costs of such investments as aforesaid ;

(*b*) the costs of the orders for the payment of the interest or other proceeds of the securities upon which such moneys are for the time being invested, and for the payment out of Court of the principal of such moneys, and of all proceedings relating thereto, except such as may be occasioned by litigation between adverse claimants.

"*Belonged to any person who had no power to alienate the same.*"—That is to say, before the acquisition by Government. By section 3, clause (*g*), proviso (iv), no person "entitled to act" is competent to receive the compensation-money payable to the person for whom he is entitled to act, unless he would have been competent to

alienate the land and receive and give a good discharge for the purchase-money on a voluntary sale. A guardian of a minor and the committee or manager of a lunatic or idiot can alienate with leave of the Court, but not otherwise.

When the land belongs to persons incompetent to alienate, the Court is bound to order the investment of the money in the purchase of other lands, or pending such purchase in Government or other approved securities.

Investment of money deposited in other cases.

33. When any money shall have been deposited in Court under this Act for any cause other than that mentioned in the last preceding section, the Court may, on the application of any party interested or claiming an interest in such money, order the same to be invested in such Government or other approved securities as it may think proper, and may direct the interest or other proceeds of any such investment to be accumulated and paid in such manner as it may consider will give the parties interested therein the same benefit therefrom as they might have had from the land in respect whereof such money shall have been deposited or as near thereto as may be.

The last section had reference to the case of an owner who was incompetent to alienate the land. This section refers to any other case in which the compensation-money has been deposited in Court. Under this section the Court may, on the application of any person interested or claiming to be interested, order the investment of the money in Government or other approved securities. Such an application may, for instance, be made by a reversioner or a remainder-man, who is interested in the money, though a tenant for life or other owner having a limited interest might fully represent the property for the purpose of its acquisition.

Payment of interest.

34. When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of six per centum per annum from the time of so taking possession until it shall have been so paid or deposited.

Ordinarily the Collector will not take possession until he has made his award (section 16), and on making an award he is bound to pay or deposit the compensation-money at once (section 31). But under section 17 he may in urgent cases take possession before he has made his award, and in such a case he must pay interest on the compensation-money from the time he took possession up to the date of payment or deposit. No interest is payable after the money has been deposited in Court.

Certain rulings under the old law on the subject of payment may be briefly referred to in this place :—In a suit to recover compensation for certain lands taken for roads under Regulation I of 1824, when plaintiff had applied for compensation in the usual course, but after various delays had been refused compensation and referred to the Civil Court after the period of limitation had expired, it was decided that the cause of action arose when the plaintiff was dispossessed from the land and not when compensation was refused, and that he was not entitled to any consideration for his delay in instituting a suit which was the best remedy prescribed by law, and that the mere fact of Government receiving revenue for the estate in which the lands were situated did not prevent the law of limitation from acting in its favour, as it would in the case of any private individual in adverse possession. —*James Hills* v. *The Magistrate of Nuddea*, 11 W. R. 1. In *Yesoba Dumodhur* v. *The Secretary of State in Council* (7 Bom. Rep., O. C. J. 12), it was held that it was discretionary with the Collector to take advantage of the provisions of section 29, Act VI of 1857 ; if after due enquiry he chose to pay to the person deemed by him to be in possession, he was not liable to be sued afterwards by the real owner. When the compensation was kept in deposit and invested under that section, the owner was not entitled to interest beyond what accrued on the Government securities. —*Syud Keramut Ali Mutwalee* v. *Raja Suttochurn Ghosal*, W. R. 1864, 329. In a suit for apportionment of certain compensation-money in deposit with the Collector, it was ruled that the cause of action did not arise until the plaintiff sought to obtain his share of the compensation, and was prevented from doing it by the act of the defendant, who would not join him or enable him to get it from the Collector.—*Raye Kissory Dassee* v. *Nilcunt Dey*, 20 W. R. 370.

PART VI.

TEMPORARY OCCUPATION OF LAND.

Temporary occupation of waste or arable land. Procedure when difference as to compensation exists.

35. (1) Subject to the provisions of Part VII of this Act, whenever it appears to the Local Government that the temporary occupation and use of any waste or arable land are needed for any public purpose, or for a Company, the Local Government may direct the Collector to procure the occupation and use of the same for such term as it shall think fit, not exceeding three years from the commencement of such occupation.

(2) The Collector shall thereupon give notice in writing to the persons interested in such land of the purpose for which the same is needed, and shall, for the occupation and use thereof for such term as aforesaid, and for the materials (if any) to be taken therefrom, pay to them such compensation, either in a gross sum of money, or by monthly or other periodical payments, as shall be agreed upon in writing between him and such persons respectively.

(3) In case the Collector and the persons interested differ as to the sufficiency of the compensation or apportionment thereof, the Collector shall refer such difference to the decision of the Court.

In sub-section (3) the words "or apportionment thereof" are new.

Power to enter and take possession, and compensation on restoration.

36. (1) On payment of such compensation, or on executing such agreement, or on making a reference under section 35,

the Collector may enter upon and take possession of the land, and use or permit the use thereof in accordance with the terms of the said notice.

(2) On the expiration of the term, the Collector shall make or tender to the persons interested compensation for the damage (if any) done to the land and not provided for by the agreement, and shall restore the land to the persons interested therein:

Provided that, if the land has become permanently unfit to be used for the purpose for which it was used immediately before the commencement of such term, and if the persons interested shall so require, the Local Government shall proceed under this Act to acquire the land as if it was needed permanently for a public purpose or for a Company.

Even if payment is made at once in a gross sum, there must apparently, under section 35, be an *agreement in writing*. The land must be restored on the expiration of the term agreed upon, unless it has become permanently unfit for the purpose for which it was formerly used, and the persons interested insist that the Government shall acquire it permanently.

The Collector must at the same time tender compensation for any further damage done, and if the tender is refused, or there is any dispute as to the amount of damage, the Collector is bound to refer the matter to the Court under the next section.

By Act II of 1861, section 5, the persons interested could, at any time before agreeing to the compensation or before the order of reference, compel the Government to acquire the land permanently or forego its occupation; under the present Act, however, they cannot do this until the expiration of the temporary occupation, and not then unless the land has been rendered permanently unfit for its former use.

If the Government refuse to complete the acquisition, a suit for compensation must be brought within one year from the date of the refusal.—Act XV of 1877, Sched. II, Art. 18.

Difference as to condition of land.

37. In case the Collector and persons interested differ as to the condition of the land at the expiration of the term, or as to any matter connected with the said agreement, the Collector shall refer such difference to the decision of the Court.

This section provides for a reference to the Court when there is a difference between the Collector and the persons interested (1) as to the condition of the land at the expiration of the term, or (2) as to any matter connected with the agreement. The former would seem to include a difference as to the permanent unfitness of the land for its former use.

PART VII.

ACQUISITION OF LAND FOR COMPANIES.

Company may be authorized to enter and survey.

38. (1) Subject to such rules as the Governor-General of India in Council may from time to time prescribe in this behalf, the Local Government may authorize any officer of any Company desiring to acquire land for its purposes to exercise the powers conferred by section 4.

(2) In every such case section 4 shall be construed as if for the words "for such purpose" the words "for the purposes of the Company" were substituted; and section 5 shall be construed as if after the words "the officer" the words "of the Company" were inserted.

By the Indian Tramways Act XI of 1886, section 7, sub-section (3), the Local Government may in the order for the acquisition of land for the purposes of a tramway of which the promoter is not a Company direct that the land may be acquired for the promoter under the provisions of this Act in the same manner and on the same conditions as it might be acquired for the purposes of the tramway if a Company was the promoter.

Previous consent of Local Government and execution of agreement necessary.

39. The provisions of sections 6 to 37 (both inclusive) shall not be put in force in order to acquire land for any Company, unless with the previous consent of the Local Government, nor unless the Company shall have executed the agreement hereinafter mentioned.

Previous enquiry.

40. (1) Such consent shall not be given unless the Local Government be satisfied, by an enquiry held as hereinafter provided,—

(a) that such acquisition is needed for the construction of some work, and

(b) that such work is likely to prove useful to the public.

(2) Such enquiry shall be held by such officer and at such time and place as the Local Government shall appoint.

(3) Such officer may summon and enforce the attendance of witnesses and compel the production of documents by the same means and, as far as possible, in the same manner as is provided by the Code of Civil Procedure in the case of a Civil Court.

Agreement with Secretary of State in Council.

41. Such officer shall report to the Local Government the result of the enquiry, and, if the Local Government is satisfied that the proposed acquisition is needed for the construction of a work, and that such work is likely to prove useful to the public, it shall, subject to such rules as the Governor-General of India in Council may from time to time prescribe in this behalf, require the Company to enter into an agreement with the Secretary of State for India in Council, providing to the satisfaction of the Local Government for the following matters, namely :—

(1) the payment to Government of the cost of the acquisition ;

(2) the transfer, on such payment, of the land to the Company ;

(3) the terms on which the land shall be held by the Company ;

(4) the time within which, and the conditions on which, the work shall be executed and maintained ; and

(5) the terms on which the public shall be entitled to use the work.

Publication of agreement.

42. Every such agreement shall, as soon as may be after its execution, be published in the *Gazette of India*, and also in the local official Gazette, and shall thereupon (so far as regards the terms on which the public shall be entitled to use the work) have the same effect as if it had formed part of this Act.

Sections 39 to 42 not to apply where Government bound by agreement to provide land for Companies.

43. The provisions of sections 39 to 42, both inclusive, shall not apply, and the corresponding sections of the Land Acquisition Act, 1870, shall be deemed never to have applied, to the acquisition of land for any Railway or other Company, for the purposes of which, under any agreement between such Company and the Secretary of State for India in Council, the Government is, or was, bound to provide land.

How agreement between Railway Company and Secretary of State may be proved.

44. In the case of the acquisition of land for the purposes of a Railway Company, the existence of such an agreement as is mentioned in section 43 may be proved by the production of a printed copy thereof purporting to be printed by order of Government.

By this part of the Act land may be compulsorily acquired by Companies for works of public utility with the previous sanction of the Local Government, subject to such rules as the Governor-General of India in Council may from time to time lay down; but such sanction is not to be given unless after enquiry the Local Government is satisfied that the acquisition is necessary for the construction of a work of public utility, and the Company execute an agreement specifying, amongst other matters (enumerated in section 41), the terms on which the public shall be entitled to use the work.

Sections 43 and 44 are new, and exempt from the operation of this part of the Act cases in which under agreement with the Secretary of State for India in Council the Government is bound to provide land for any Railway or other Company.

PART VIII.

MISCELLANEOUS.

Service of notices.

45. (1) Service of any notice under this Act shall be made by delivering or tendering a copy thereof signed, in the case of a notice under section 4, by the officer therein mentioned, and, in the case of any other notice, by or by order of the Collector or the Judge.

(2) Whenever it may be practicable, the service of the notice shall be made on the person therein named.

(3) When such person cannot be found, the service may be made on any adult male member of his family residing with him; and, if no such adult male member can be found, the notice may be served by fixing the copy on the outer door of the house in which the person therein named ordinarily dwells or carries on business, or by fixing a copy thereof in some conspicuous place in the office of the officer aforesaid or of the Collector or in the Court-house, and also in some conspicuous part of the land to be acquired:

Provided that, if the Collector or Judge shall so direct, a notice may be sent by post, in a letter addressed to the person named therein at his last known residence, address or place of business, and registered under Part III of the Indian Post Office Act, 1866, and service of it may be proved by the production of the addressee's receipt.

The "Judge" in this section obviously means the Court mentioned in section 20.

The proviso is new.

Penalty for obstructing acquisition of land.

46. Whoever wilfully obstructs any person in doing any of the acts authorized by section 4 or section 8, or wilfully fills up, destroys, damages or displaces any trench or

mark made under section 4, shall, on conviction before a Magistrate, be liable to imprisonment for any term not exceeding one month, or to fine not exceeding fifty rupees, or to both.

Magistrate to enforce surrender.

47. If the Collector is opposed or impeded in taking possession under this Act of any land, he shall, if a Magistrate, enforce the surrender of the land to himself, and, if not a Magistrate, he shall apply to a Magistrate or (within the towns of Calcutta, Madras and Bombay) to the Commissioner of Police, and such Magistrate or Commissioner (as the case may be) shall enforce the surrender of the land to the Collector.

Completion of acquisition not compulsory, but compensation to be awarded when not completed.

48. (1) Except in the case provided for in section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

(2) Whenever the Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.

(3) The provisions of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section.

The object of this section is to prevent the introduction into this country of the English rule that a notice to treat is held to be a statuteable agreement, upon which, if not duly carried out, an action for damages and a mandamus may be sustained.—*Morgan* v. *Metropolitan Railway Company*, L. R., 3 C. P. 553; 4 *ibid*, 97. But it is compulsory on Government to complete the acquisition if possession has been taken of the land.

The compensation due under sub-section (2) will ordinarily fall under the fifth and sixth clauses of section 23, sub-section (1). The owner may have gone to expense in changing his residence or place of business, or he may have been unable to use the land to the best advantage in consequence of the notice.

If the person interested is dissatisfied with the Collector's decision as to the amount payable, he may by sub-section (3) have the matter referred for the determination of the Court under Part III of the Act.

Acquisition of part of house or building.

49. (1) The provisions of this Act shall not be put in force for the purpose of acquiring a part only of any house, manufactory or other building, if the owner desire that the whole of such house, manufactory or building shall be so acquired:

Provided that the owner may, at any time before the Collector has made his award under section 11, by notice in writing, withdraw or modify his expressed desire that the whole of such house, manufactory or building shall be so acquired:

Provided also that, if any question shall arise as to whether any land proposed to be taken under this Act does or not form part of a house, manufactory or building within the meaning of this section, the Collector shall refer the determination of such question to the Court and shall not take possession of such land until after the question has been determined.

In deciding on such a reference the Court shall have regard to the question whether the land proposed to be taken is reasonably required for the full and unimpaired use of the house, manufactory or building.

(2) If, in the case of any claim under section 23, sub-section (1), *thirdly*, by a person interested, on account of the severing of the land to be acquired from his other land, the Local Government is of opinion that the claim is unreasonable or excessive, it may, at any time before the Collector has made his award, order the acquisition of the whole of the land of which the land first sought to be acquired forms a part.

(3) In the case last hereinbefore provided for, no fresh declaration or other proceedings under sections 6 to 10, both inclusive, shall be necessary ; but the Collector shall without delay furnish a copy of the order of the Local Government to the person interested, and shall thereafter proceed to make his award under section 11.

The two provisoes to sub-section (1) and sub-sections (2) and (3) are new.

Sub-section (1), *Proviso* (*i*).—After expressing his desire that the whole of a house, manufactory or building should be taken under the Act, the owner may withdraw or modify that desire at any time before the Collector has made his award.

Proviso (*ii.*)—Under Act X of 1870 there was a conflict of authority as to whether this question could be decided in proceedings under the Act. See on the one side *Taylor* v. *The Collector of Purneah*, I. L. R., 14 Cal 423, and *Ramalakshmi* v. *Collector of Kistna*, I. L. R., 16 Mad. 321 ; and on the other, *Khairati Lal* v. *The Secretary of State for India in Council*, I L. R, 11 All. 378. The point has been set at rest by this proviso. The Collector is to refer the question for the determination of the Court, and he must not take possession of any part of the land until the question has been determined, because, should the decision be against the Government, the Government might wish to withdraw from the acquisition under section 48. And if the decision is appealed, he should wait until the appeal has been determined.

In deciding this question the Court is to consider whether the land which it is proposed to take under the Act is reasonably required for the full and unimpaired use of the house, manufactory or building, and so may be deemed really to form a part of it. See *Steele* v. *Midland Railway Co.*, L. R., 1 Ch. App. 275, and other cases cited below.

Sub-section (2). In any case in which the Local Government is of opinion that the claim for damages on account of severance under the third clause of section 23, sub-section (1), are unreasonable or excessive, it may order the acquisition of the entire land.

Sub-section (3) provides that in such a case no fresh declaration or other proceedings under sections 6 to 10 (inclusive) shall be necessary ; the Collector will merely furnish a copy of the order of Government to the person interested and will then proceed to

make his award. But it is obvious that the additional land which it is proposed to acquire will in many cases have to be marked out and measured under section 8, and it will probably be safer to issue fresh notices under section 9.

Under Act VI of 1857, section 32, it was held that a well in a mill compound from which the mill's engine was supplied with water was part of the manufactory within the meaning of the Act.—*Kharshedji Nusserwanjee* v. *The Secretary of State for India, in Council*, 5 Bom Rep., O. C 98 In the same case, however, it was held that the owners of the mill by appointing an arbitrator before they made any claim under the section in question, had waived any irregularity in the previous proceedings and precluded themselves from claiming to have the whole manufactory taken, though no proceedings were taken in the arbitration for nearly twelve months subsequently and the defendants had shortly before such proceedings made such a claim. Similarly, under Act II of 1861, section 5, a requisition to acquire permanently land needed for temporary occupation only, had to be made before the compensation was agreed to, or before the matter was referred to arbitration.

In *Khairati Lal* v. *The Secretary of State for India in Council*, I L R, 11 All. 378, the Court said :—" We are perfectly satisfied that the correct interpretation of section 55 (of Act X of 1870) is the same as the interpretation that has been put on the corresponding section 92 of the Lands Clauses Consolidation Act ; and that in this case, for instance, the appellant objecting, the Government could not take, under the compulsory powers of the Act, the out-offices or that portion of the compound which they did take, unless they took the whole ; that is to say, the house with its other out-offices and appurtenances and its compound, so far as the compound was the compound of the house."

The following English decisions in this matter may be useful :—

The word 'house' comprises not only the courtyard, but also the office-houses and garden, and all that is necessary to the enjoyment of the house, if within the same ambit or circuit, whether attached to the main building or not, and though purchased subsequently to the erection of the main building —*The Governors of St. Thomas's Hospital* v. *Charing Cross Railway Co.*, 30 L J, Ch 395. When a railway intersected a garden and

orchard attached to a mansion, the Company was held bound to take the entire property.—*King* v *Wycombe Railway Co*, 29 L J., Ch. 462. See also *Grosvenor* v. *Hampstead Junction Railway Co.*, 26 L. J., Ch. 731, and *Cole* v. *The West London and Crystal Palace Railway Co*, 28 L J., Ch. 767. Houses in course of construction are houses within the meaning of the section.—*Alexander* v. *West End of London and Crystal Palace Railway Co.*, 31 L. J., Ch. 500 The test is, would the land required pass in a conveyance of the house as a part of the appurtenances.—*Fergusson* v *London, Brighton and South Coast Railway Co.*, 2 N. R. 503, 506 ; *Smith* v. *Martin*, 2 Wms. Saun. 500.

But the Government is not bound to take any land which is not necessary for the convenient occupation of the house, but only subsidiary thereto.—*Steele* v. *Midland Railway Co*, L R, 1 Ch App. 275 ; *Fergusson* v. *London, Brighton and South Coast Railway Co*, 33 L J., Ch. 29.

Where a manufactory was partly worked by water-power supplied by a reservoir, which reservoir was supplied by a goit into which water was turned from a natural stream at some distance from the manufactory, and at the point where the goit commenced, there was a weir with shuttles and a residence for a man to see to the shuttles, and a Railway Company proposed to take the weir, shuttles, residence and part of the goit, it was held that they were bound to take the whole of the manufactory.—*Furniss* v. *Midland Railway Company*, L R, 6 Eq Ca 473. A vacant piece of land in front of a public-house which had always passed with the lease of the house and formed the only means of approach for vehicles, was held to be part of the house.—*Marson* v. *London, Chatham and Dover Railway Co.*, L. R., 6 Eq Ca. 101 And if the ground can fairly be considered part of the house as a residence, it is immaterial that part of it may be used for business purposes, as *e.g.* a nursery garden.—*Salter* v *Metropolitan District Railway Co.*, L. R, 9 Eq. Ca. 432.

"The cases which have been decided upon this provision have already gone far enough. In my experience Companies have rather been the victims of the Statute than individuals. At the same time I am quite disposed to adhere to the rule which has been laid down, that it shall be construed liberally for the owner of property." *Per* the LORD CHANCELLOR, in *Reddin* v. *Metropolitan Board of Works*, 31 L J, Ch 660.

It has been ruled that making a tunnel under a building is taking part of the building, but that throwing an arch over it is not.

Under section 48 the Government may withdraw from the acquisition, if required to take the whole building, provided that the Collector has not taken possession.

Acquisition of land at cost of a local authority or Company.

50. (1) Where the provisions of this Act are put in force for the purpose of acquiring land at the cost of any fund controlled or managed by a local authority or of any Company, the charges of and incidental to such acquisition shall be defrayed from or by such fund or Company.

(2) In any proceeding held before a Collector or Court in such cases the local authority or Company concerned may appear and adduce evidence for the purpose of determining the amount of compensation :

Provided that no such local authority or Company shall be entitled to demand a reference under section 18.

See the definition of "local authority" in the Land Acquisition (Mines) Act XVIII of 1885, section 16 (*a*). The charges will, of course, include any costs payable by the Collector under section 27, as well as any expenses incurred under sections 5, 8, 9, 11, 17, 32, 34, 35, 36 or 48.

Sub-section (2) and the proviso are new. As regards the proviso the Select Committee said : —We cannot, however, agree that this authority should be permitted to appeal from the Collector's award. We have not given to Government itself power to make this appeal, because the Collector is only the agent of Government in the acquisition of land; his action is taken under rules laid down for his guidance, which include a preliminary valuation; and these rules ordinarily provide, and ought to provide, that, where the Collector finds cause to anticipate that his eventual award will substantially exceed his provisional estimate, he shall stay proceedings till he receives the further instructions of higher authority. No local authority or Company is compelled to proceed under the Land Acquisition Act. If it can procure its land more cheaply by private negotiation, it is entirely at liberty to do so ; but if it elects to set in motion the very special powers

given to Government for public objects, it can expect no higher privileges and powers than those given to Government itself."—*Report of the Select Committee, dated 22nd March* 1893.

Exemption from stamp-duty and fees.

51. No award or agreement made under this Act shall be chargeable with stamp-duty, and no person claiming under any such award or agreement shall be liable to pay any fee for a copy of the same.

Notice in case of suits for anything done in pursuance of Act.

52. No suit or other proceeding shall be commenced or prosecuted against any person for anything done in pursuance of this Act, without giving to such person a month's previous notice in writing of the intended proceeding, and of the cause thereof, nor after tender of sufficient amends.

The first clause of the corresponding section in Act X of 1870 (section 58) has been omitted. It ran thus :—"No suit shall be brought to set aside an award under this Act."

A suit brought under the third proviso to section 31, sub-section (2), is not a suit to set aside the award.—*Kaminee Debia* v. *Protap Chunder Sandyal*, 25 W. R 103

"I think the term 'award' used in section 58 (of Act X of 1870) does not include the decision of the Court under section 39. But this section indicates the intention of the Legislature to make proceedings under this Act final, and to make the mode of dealing with the questions to be raised under the Act exhaustive and self-contained." *Per* JACKSON, J , in *Nilmonee Singh Deo* v. *Rambundhoo Roy*, I. L. R., 4 Cal. 760 ; 3 C. L. R. 220.

It has been held in England that the parties are confined to the specific remedy given by the Statute, and have no choice of any other tribunal to settle the amends in any case under the Act—*Boyfield* v. *Porter*, 13 East 208. So that persons seeking to avail themselves of the provisions of the Statute are bound to follow the particular remedy given and no other.—*Mayor, &c , of Blackburn* v. *Parkinson*, 28 L. J., M. C. 7 ; unless the statutory remedy does not extend to and cover the whole right.—*Shepherd* v. *Hills*, 11 Exch. 67.

As to the period of limitation for suits for compensation for acts done in pursuance of the Statute, see Act XV of 1877, sched. ii, art. 2.

Code of Civil Procedure to apply to proceedings before Court.

53. Save in so far as they may be inconsistent with anything contained in this Act, the provisions of the Code of Civil Procedure shall apply to all proceedings before the Court under this Act.

Appeals in proceedings before Court.

54. Subject to the provisions of the Code of Civil Procedure applicable to appeals from original decrees, an appeal shall lie to the High Court from the award or from any part of the award of the Court in any proceedings under this Act.

Under section 35 of Act X of 1870 an appeal lay to the District Judge, unless the Judge whose decision was appealed from was the District Judge, or unless the amount which the Judge proposed to award exceeded five thousand rupees, in either of which cases the appeal was to the High Court. But under the new Act the appeal is to the High Court in every case.

In *Gobind Lall Seal* v. *Secretary of State for India* (Appeal from original decree, 32 of 1882, Calcutta, not reported) it was doubted whether an appeal would lie in a case where no compensation is awarded, but where merely questions of title are decided. But see *Atri Bai* v. *Arnopoorna Bai*, I. L. R., 9 Cal. 838 ; 12 C. L. R. 409, and *Secretary of State for India in Council* v. *Sham Bahadoor*, I. L. R, 10 Cal. 769.

Power to make rules.

55. (1) The Local Government shall have power to make rules consistent with this Act for the guidance of officers in all matters connected with its enforcement, and may from time to time alter and add to the rules so made.

(2) The power to make, alter and add to rules under sub-section (1) shall be subject to the condition of the rules being made, altered or added to after previous publication.

(3) All such rules, alterations and additions shall, when sanctioned by the Governor-General in Council, be published

in the official Gazette, and shall thereupon have the force of law.

This section gives to the Local Government the power of making rules consistent with the Act for the guidance of its executive officers in matters connected with its administration ; and most of the Local Governments have availed themselves of this power. But the rules so made will not have the force of law or be binding upon the Courts, unless they have been sanctioned by the Governor-General in Council under this section and published in the local official Gazette Under Act X of 1870 rules having the force of law were made by the Government of Bengal, but apparently not by any other Local Government. By section 2, sub-section (2) of this Act rules made under Act X of 1870 are to be deemed to have been made under this Act.

Sub-section (2) is new. The meaning of the words "after previous publication" is explained in the General Clauses Act I of 1887, section 6.

THE LAND ACQUISITION (MINES) ACT, 1885.

CONTENTS.

SECTIONS.

1. Short title, commencement, and local extent.
2. Saving for mineral rights of the Government.
3. Declaration that mines are not needed.
4. Notice to be given before working mines lying under land.
5. Power to prevent or restrict working.
6. Mode of determining persons interested and amount of compensation.
7. If Local Government does not offer to pay compensation, mines may be worked in a proper manner.
8. Mining communications.
9. Local Government to pay compensation for injury done to mines.
10. And also for injury arising from any airway or other work.
11. Power to officer of Local Government to enter and inspect the working of mines.
12. Penalty for refusal to allow inspection.
13. If mines worked contrary to provisions of this Act, Local Government may require means to be adopted for safety of land acquired.
14. Construction of Act when land acquired has been transferred to a local authority or Company.
15. Pending cases.
16. Definition of local authority and Company.
17. This Act to be read with Land Acquisition Act, 1870.

ACT No. XVIII of 1885.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

(*Received the assent of the Governor-General on the* 16*th October* 1885).

An Act to provide for cases in which Mines or Minerals are situate under land which it is desired to acquire under the Land Acquisition Act, 1870.

By section 2, sub-section (3) of the Land Acquisition Act, 1894, any reference in this Act to the Land Acquisition Act, 1870, shall, so far as may be, be construed to refer to the Act of 1894 or to the corresponding portion thereof.

WHEREAS it is expedient to provide for cases in which mines or minerals are situate under land which it is desired to acquire under the Land Acquisition Act, 1870; It is hereby enacted as follows :—

Short title, commencement, and local extent.

1. (1) This Act may be called "The Land Acquisition (Mines) Act, 1885;" and

(2) It shall come into force at once.

(3) It extends in the first instance to the territories administered by the Governor of Madras in Council and the Lieutenant-Governor of Bengal, but any other Local Government may, from time to time, by notification in the Official Gazette, extend this Act to the whole or any specified part of the territories under its administration.

The following is taken from the Statement of Objects and Reasons published at the time the Act was introduced into the Legislative Council :—

"The object of the Bill is to provide for cases in which mines or minerals are situate under land which it is desired to acquire under the Land Acquisition Act, 1870.

"Act XXII of 1863, which was replaced by the Land Acquisition Act, 1870, contained specific provisions (ss. 51 and 52) for cases in which mines and minerals lay under land taken up under that Act. These provisions were not, however, re-enacted in the Act of 1870, which, as the Government is advised, contemplates the acquisition of the underlying minerals as well as the surface of the land.

"Hitherto this state of the law has caused no inconvenience. Now, however, owing to its being proposed to extend railways across districts where there is a certain amount of coal to be found, notice has been drawn to the inconvenience of the existing law, which practically compels the Government either to purchase all the mines and minerals under the land over which it is proposed to construct a line or to abandon the undertaking altogether.

"Under these circumstances, the present Bill has been prepared. It does not, however, simply re-enact the provisions which Act XXII of 1863 formerly contained, inasmuch as they do not appear to be adapted to the circumstances of the case. It follows rather the rules contained in the English Railway Clauses Consolidation Act, 1845 (8 Vict., c. 20, s. 77 *et seq.*), which it extends to the acquisition of land for all purposes and not merely for the construction of railways."

The Act has been declared to be in force in the Sonthal Pergunnahs by Regulation III of 1872, section 3, as amended by Regulation III of 1886, section 2.

Saving for mineral rights of the Government.

2. Except as expressly provided by this Act, nothing in this Act shall affect the right of the Government to any mines or minerals.

The right of Government to mines and minerals has been expressly declared in certain local statutes. Thus, the Punjab Land Revenue Act XXXIII of 1871, section 29 :—"Mines of metal

or coal and goldwashings shall in every case be deemed to be the property of Government; but if Government works or causes to be worked any such mine, compensation for damage to the surface of the soil shall be made to the owner of such surface. Such compensation may be claimed and shall be ascertained and awarded in accordance with the provisions of Act X of 1870." Similarly, section 3 of the Ajmir Land and Revenue Regulation II of 1877 provides that "except in the case of lands in respect of which istimrári sanads have been granted by the Chief Commissioner with the previous sanction of the Governor-General in Council, the Government shall be presumed until the contrary is proved to be the sole owner of all mines, opened and unopened, of metal, coal and other valuable minerals, with full liberty to search for and work the same." And section 151 of the *Central Provinces Land Revenue Act*, XVIII of 1881, provides that, unless it is otherwise expressly provided in the records of a settlement or by the terms of a grant made by Government, the right to all mines, minerals, coal and quarries shall be deemed to belong to Government; and the Government shall have all powers necessary for the proper enjoyment of such rights: Provided that whenever in the exercise by the Government of the rights herein referred to over any land, the rights of any persons are infringed by the occupation or disturbance of the surface of such land, the Government shall pay to such persons compensation for such infringement, and the amount of such compensation shall be determined as nearly as may be in accordance with the provisions of the Land Acquisition Act, 1870.

Declaration that mines are not needed.

3. (1) When the Local Government makes a declaration under section 6 of the Land Acquisition Act, 1870, that land is needed for a public purpose or for a Company, it may, if it thinks fit, insert in the declaration a statement that the mines of coal, iron-stone, slate or other minerals lying under the land or any particular portion of the land, except only such parts of the mines or minerals as it may be necessary to dig or carry away or use in the construction of the work for the purpose of which the land is being acquired, are not needed.

(2) When a statement as aforesaid has not been inserted in the declaration made in respect of any land under section 6 of the Land Acquisition Act, 1870, and the Collector is of opinion that the provisions of this Act ought to be applied to the land, he may abstain from tendering compensation under section 11 of the said Land Acquisition Act in respect of the mines, and may—

(*a*) when he makes an award under section 14 of that Act, insert such a statement in his award ;

(*b*) when he makes a reference to the Court under section 15 of that Act, insert such a statement in his reference ; or

(*c*) when he takes possession of the land under section 17 of that Act, publish such a statement in such manner as the Governor-General in Council may, from time to time, prescribe.

(3) If any such statement is inserted in the declaration, award or reference, or published as aforesaid, the mines of coal, iron-stone, slate or other minerals under the land or portion of the land specified in the statement, except as aforesaid, shall not vest in the Government when the land so vests under the said Act.

By sub-section (1) the Government may, when making a declaration under section 6 of the Land Acquisition Act that land is needed for a public purpose, insert a statement to the effect that the mines and minerals lying under the land are not needed, and if such a statement is made, by sub-section (3) the mines and minerals will not pass with the land and compensation will not be payable for them.

And by sub-section (2) even when no such statement is inserted in the declaration, the Collector may abstain from taking the mines and minerals, but in such a case he must either (*a*) make a statement to that effect in his award, or (*b*) in his order of reference to the Court, or (*c*) in urgent cases when he takes possession of the land before making an award under

section 17, publish a statement to that effect in such manner as the Governor-General in Council may prescribe.

And by sub-section (3) if such a statement is so made or published, the mines and minerals will not vest in the Government with the land.

Under Act I of 1894 the Collector is bound to make an award by section 11, and section 19 of the Act prescribes what the Collector is to state in his order of reference to the Court.

A mine has been defined to be a way or passage underground; and a quarry to be a stone-pit, a place upon or above, and not under the ground. In *Bell* v. *Wilson*, 34 L. J., Ch. 572; 35 L. J., Ch. 337; L. R., 1 Ch Ap. 303, it was held that the reservation in a conveyance of "mines, metals or minerals" included freestone; but that under the reservation the stone could not be worked except by means of underground workings. The term minerals, properly speaking, includes only such substances as are dug out of the earth by means of a pit or covered tunnel and does not include, for instance, limestone rock which is worked by means of a quarry.—*Davvell* v. *Roper*, 24 L. J., Ch. 779. But there appears to be no fixed principle upon which the Courts will interpret the word. They will in general interpret it according to the nature of the instrument in which it occurs and the circumstances under which the instrument is framed.—*Bell* v. *Wilson* (*supra.*)

Notice to be given before working mines lying under land.

4. If the person for the time being immediately entitled to work or get any mines or minerals lying under any land so acquired is desirous of working or getting the same, he shall give the Local Government notice in writing of his intention so to do sixty days before the commencement of working.

The length of notice prescribed by the English statute is thirty days only.—8 & 9 Vict., c. 20, s. 78.

Power to prevent or restrict working.

5. (1) At any time or times after the receipt of a notice under the last foregoing section, and whether before or after the expiration of the said period of sixty days, the Local Government may

cause the mines or minerals to be inspected by a person appointed by it for the purpose ; and

(2) If it appears to the Local Government that the working or getting of the mines or minerals, or any part thereof, is likely to cause damage to the surface of the land or any work thereon, the Local Government may publish, in such manner as the Governor-General in Council may, from time to time, direct, a declaration of its willingness, either—

(*a*) to pay compensation for the mines or minerals still unworked or ungotten, or that part thereof, to all persons having an interest in the same ; or

(*b*) to pay compensation to all such persons in consideration of those mines or minerals, or that part thereof, being worked or gotten in such manner and subject to such restrictions as the Local Government may in its declaration specify.

(3) If the declaration mentioned in case (*a*) is made, then those mines or minerals, or that part thereof, shall not thereafter be worked or gotten by any person.

(4) If the declaration mentioned in case (*b*) is made, then those mines or minerals, or that part thereof, shall not thereafter be worked or gotten by any person save in the manner and subject to the restrictions specified by the Local Government.

The principle of the present Act is that compensation need not be paid for minerals at the time the land is acquired, but if subsequently the owner desires to work them, the Government must pay compensation if it is necessary to prevent him from working them in the most advantageous manner.

Mode of determining persons interested and amount of compensation.

6. When the working or getting of any mines or minerals has been prevented or restricted under section 5, the persons interested in those mines or minerals and the amounts of compensation payable to them respectively shall, subject to all necessary modifications,

be ascertained in the manner provided by the Land Acquisition Act, 1870, for ascertaining the persons interested in the land to be acquired under that Act and the amounts of compensation payable to them, respectively.

This section has reference (*a*) to the compensation to be paid for the mines or minerals under any land acquired which the owner is prevented from getting under sub-section (3) of the previous section, and also (*b*) to the compensation to be made for the restrictions placed on the working of such mines or minerals under sub-section (4)

The lessee of mines, whose term is of sufficient length to enable him by working with reasonable diligence to exhaust them, is, for the purpose of this section, the absolute owner thereof; and the Company having paid him compensation are in the position of absolute owner of the minerals in perpetuity; and neither the reversioner nor any person claiming under him is entitled to any compensation other than for the loss of royalty by reason of the non-working of the mines.—*Great Western Railway Co.* v. *Smith*, 45 L. J., Ch. 235.

In *Barnsley Canal Co.* v. *Twill*, 13 L. J, Ch. 234, the Company had purchased of the lessor all his interest in the coals which they had required him to abstain from working. It was held that they were also bound to compensate the lessee for the loss of profits on such coals. A coal owner is also entitled to compensation for any injury he may sustain by having to work the mine in a less beneficial manner for the sake of not injuring the Company.—*Cromford Canal Co.* v. *Cutts and another*, 5 Rail. Ca. 442.

If Local Government does not offer to pay compensation, mines may be worked in a proper manner.

7. (1) If before the expiration of the said sixty days the Local Government does not publish a declaration as provided in section 5, the owner, lessee, or occupier of the mines may, unless and until such a declaration is subsequently made, work the mines or any part thereof in a manner proper and necessary for the beneficial working thereof, and according to the usual manner of working such mines in the local area where the same are situate.

(2) If any damage or obstruction is caused to the surface of the land or any works thereon by improper working of the mines, the owner, lessee or occupier of the mines shall at once, at his own expense, repair the damage or remove the obstruction, as the case may require.

(3) If the repair or removal is not at once effected, or, if the Local Government so thinks fit, without waiting for the same to be effected by the owner, lessee or occupier, the Local Government may execute the same and recover from the owner, lessee or occupier the expense occasioned thereby.

"The Company can stop all dangerous working at any time they think fit, and they are the sole judges of when the working becomes dangerous, provided they act within reasonable limits." *Per* Lord ROMILLY in *Midland Railway Co.* v. *Checkley*, 36 L. J. Ch. 380.

In *The Caledonian Railway Co.* v. *Sprot* (2 Macq. Sc. Ap. 449) it was held that a person selling land for a railway impliedly sells all necessary support, both subjacent and adjacent, that is required for the purpose of supporting that railway. That decision, however, was given before the passing of the Railway Clauses Consolidation Act and was a decision upon a contract. The case of *Elliott* v. *The North-Eastern Railway Co.* (10 H. L. C. 333; 32 L. J, Ch. 402) also turned upon a private Act of Parliament, in which it was held that there was "nothing to exclude the ordinary right of a purchaser to such support of the land which he has bought, both subjacent and adjacent, as the common law of the land gives him" The leading case under the Railway Clauses Consolidation Act is that of *The Great Western Railway Co.* v *Bennett* (L R., 2 H. L. 27), in which Lord CRANWORTH said :—"It was obviously the intention of the Legislature in making these provisions to create a new Code as to the relation between mine owners and Railway Companies where lands were compulsorily taken for the purposes of a railway. The object of the statute evidently was to get rid of all the ordinary law on the subject, and to compel the owner to sell the surface, and if any mines were so near the surface that they must be taken for the purposes of the railway, to compel him to sell them, but not to compel him to sell anything more. The land was to be

dealt with just as if there were no mines to be considered—nothing but the surface. That being so, justice obviously requires that when the mine owner thinks it beneficial to him to work his mines, and proceeds to do so, he should be just in the same position as if he had never sold any part of the surface at all. If he had not compulsorily parted with the surface, he might have worked his mines, sinking his shaft from the very surface down to the very bottom of the mine. The object of the statute was that, for the purpose of the railway, the Company was to take (and it was a very beneficial provision for the Company) that and that only which is necessary for the purpose of the railway, and that all the rest should be left to be dealt with, whenever the time for working the mine should arrive." Similarly, Lord WESTBURY said :—"In the face of these words (of the statute) there is no room for the ordinary implication which applies to a common grant, namely, that it extends by implication to all that, though not named, which is necessary for the support or enjoyment of the thing granted. Then what relation remains between the Railway Company and the mine owner? It is defined by the statute. Although the mines *in solido* are, without any exception, reserved to the mine owner, he is not at liberty to win them or to proceed to get them without notice to the Railway Company. That notice expires after a month. During that month the Railway Company is under an obligation to ascertain whether it may be requisite for the support of the railway to purchase any part of the subjacent minerals. If the Company should not think it requisite, the mine owner is left under no other obligation than that he is to win the mines in a proper manner; and if there is a custom of the country, it must be done according to that custom; and the Railway Company is armed with authority to inspect the working from time to time in order to ascertain whether any damage is likely to ensue, or whether any proceeding of the mine owner is inconsistent with the ordinary beneficial manner of winning the minerals. The relation, therefore, between the Railway Company and the mine owner is one so clearly defined, so useful to the Railway Company and at the same time so fair and just to the mine owner, that one is astonished that any argument could have been raised upon the ordinary implication applicable to a grant, which is so entirely excluded by the express enactment of the statute and also by the accompanying provisions that define,

beyond the possibility of mistake, the true relation which, after the land has been conveyed to the Railway Company, continues to exist between the Company and the mine owner."

Mining communications.

8. If the working of any mines is prevented or restricted under section 5, the respective owners, lessees and occupiers of the mines, if their mines extend so as to lie on both sides of the mines, the working of which is prevented or restricted, may cut and make such and so many airways, headways, gateways or water-levels through the mines, measures or strata, the working whereof is prevented or restricted, as may be requisite to enable them to ventilate, drain and work their said mines; but no such airway, headway, gateway or water-level shall be of greater dimensions or section than may be prescribed by the Governor-General in Council in this behalf, and, where no dimensions are so prescribed, not greater than eight feet wide and eight feet high, nor shall the same be cut or made upon any part of the surface or works, or so as to injure the same, or to interfere with the use thereof.

This section provides for the making of the necessary mining communications under the land acquired when the working of the mines under such land is prevented or restricted.

Local Government to pay compensation for injury done to mines.

9. The Local Government shall, from time to time, pay to the owner, lessee or occupier of any such mines extending so as to lie on both sides of the mines, the working of which is prevented or restricted, all such additional expenses and losses as may be incurred by him by reason of the severance of the lands lying over those mines or of the continuous working of those mines being interrupted as aforesaid, or by reason of the same being worked in such manner and under such restrictions as not to prejudice or injure the surface or works, and for any minerals not acquired by the Local Government which cannot be obtained by reason of the action taken under the foregoing sections; and if any

dispute or question arises between the Local Government and the owner, lessee or occupier as aforesaid, touching the amount of those losses or expenses, the same shall be settled as nearly as may be in the manner provided for the settlement of questions touching the amount of compensation payable under the Land Acquisition Act, 1870.

This section has reference to the payment of compensation to the owners of mines which extend so as to lie on both sides of the mines the working of which has been prevented or restricted. Such compensation may include—

(*a*) all such additional expenses and losses as may be incurred by reason of the severance of the lands lying over the mines;

(*b*) or by reason of the continuous working of the mines being interrupted;

(*c*) or by reason of their being worked in such manner and under such restrictions as not to prejudice or injure the surface or works;

(*d*) the value of any minerals not acquired by Government which cannot be won by reason of the action taken under this Act.

And also for injury arising from any airway or other work.

10. If any loss or damage is sustained by the owner or occupier of the lands lying over any such mines, the working whereof has been so prevented or restricted as aforesaid, and not being the owner, lessee or occupier of those mines, by reason of the making of any such airway or other works as aforesaid, which or any like work it would not have been necessary to make but for the working of the mines having been so prevented or restricted as aforesaid, the Local Government shall pay full compensation to that owner or occupier of the surface lands for the loss or damage so sustained by him.

This section provides for compensation for damage sustained by the owner of adjacent lands, who is not also the owner of the mines.

Power to officer of Local Government to enter and inspect the working of mines.

11. For better ascertaining whether any mines lying under land acquired in accordance with the provisions of this Act are being worked, or have been worked, or are likely to be worked, so as to damage the land or the works thereon, an officer appointed for this purpose by the Local Government may, after giving twenty-four hours' notice in writing, enter into and return from any such mines or the works connected therewith ; and for that purpose the officer so appointed may make use of any apparatus or machinery belonging to the owner, lessee or occupier of the mines, and use all necessary means for discovering the distance from any part of the land acquired to the parts of the mines which have been, are being, or are about to be worked.

Penalty for refusal to allow inspection.

12. If any owner, lessee or occupier of any such mines or works refuses to allow any officer appointed by the Local Government for that purpose to enter into and inspect any such mines or works in manner af resaid, he shall be punished with fine which may extend to two hundred rupees.

If mines worked contrary to provisions of this Act, Local Government may require means to be adopted for safety of land acquired.

13. If it appears that any such mines have been worked contrary to the provisions of this Act, the Local Government may, if it thinks fit, give notice to the owner, lessee or occupier thereof to construct such works and to adopt such means as may be necessary or proper for making safe the land acquired and the works thereon, and preventing injury thereto ; and if, after such notice, any such owner, lessee or occupier does not forthwith proceed to construct the works necessary for making safe the land acquired and the works thereon, the Local Government may itself construct the works and recover the expense thereof from the owner, lessee or occupier.

Construction of Act when land acquired has been transferred to a local authority or Company.

14. When a statement under section 3 has been made regarding any land, and the land has been acquired by the Government, and has been transferred to or has vested by operation of law in a local authority or Company, then sections 4 to 13, both inclusive, shall be read as if for the words "the Local Government," wherever they occur in those sections, the words "the local authority or Company, as the case may be, which has acquired the land" were substituted.

Pending cases.

15. (1) This Act shall apply to any land for the acquisition whereof proceedings under the Land Acquisition Act, 1870, are pending at the time when this Act comes into force, unless before that time the Collector has made, in respect of the land, an award under section 14 or a reference to the Court under section 15 of that Act, or has taken possession of the land under section 17 of the same.

(2) When the Collector has before the said time made an award or reference in respect of any such land or taken possession thereof as aforesaid, and all the persons interested in the land, or entitled under the Land Acquisition Act, 1870, to act for persons so interested, who have attended or may attend in the course of the proceedings under sections 11 to 15, both inclusive, of the Land Acquisition Act, 1870, consent in writing to the application of this Act to the land, the Collector may, by an order in writing, direct that it shall apply, and thereupon it shall be deemed to have applied from the commencement of the proceedings; and the Collector shall be deemed, as the case may be, to have inserted in his award or reference, or to have published in the prescribed manner, when he took possession, the statement mentioned in section 3 of this Act.

16. In this Act—

Definition of local authority and Company.

(a) "Local authority" means any municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by, the Government with, the control or management of any municipal or local fund ; and

(b) "Company" means a Company registered under any of the enactments relating to Companies from time to time in force in British India, or formed in pursuance of an Act of Parliament or by Royal Charter or Letters Patent.

Compare the definition of "Company" in Act I of 1894, section 3, clause (e).

This Act to be read with Land Acquisition Act, 1870.

17. This Act shall, for the purposes of all enactments for the time being in force, be read with and taken as part of the Land Acquisition Act, 1870.

RULES.

Rules made by the Government of Bengal under Section 59 of Act X of 1870.

(*Published in the Calcutta Gazette of 6th November* 1889, *Part I, pages* 898—900.)

WHEREAS the basis of compensation to be awarded for revenue-paying lands taken up under the provisions of Act X of 1870 is intended by the said Act to be the actual price for which the land, subject to all its burdens, and among others to the burden of the payment of land-revenue, would sell in the market, it is necessary that the exact amount of the revenue demand should be ascertained and recorded before the award of compensation can be determined ; and whereas, under the provisions of the existing law, the Revenue authorities, and none other, can regulate the amount of the revenue charge to be enforced against an estate, or a portion of an estate ; and whereas, some of the rules already promulgated under section 59 of the said Act proceed on assumptions which are at variance with the principle above enunciated, the following revised rules are issued by the Government of Bengal, with the sanction of the Governor-General in Council, in supersession of those previously in force :—

I.—Whenever any revenue-paying land shall be acquired under the Act, the proprietor shall, except as provided in Rule VI, be relieved of liability to pay revenue to the extent of the Government demand upon the said land ; and such relief shall have effect from the date on which the Collector may take possession of the land on account of Government.

II.—In such cases the Collector shall, before making a tender, or a reference to a Court regarding compensation,

ascertain, in accordance with the following rule and record, the amount of Government revenue which is to be taken as payable in respect of the acquired portion; and shall, in event of a reference being made to a Court, furnish the Court, at the time of making the reference, with particulars of the amount of the share so ascertained and recorded.

III.—If the land to be acquired be an entire estate or tenure assessed with a specific amount of revenue, the whole of such amount shall be remitted.

IV.—If the land be not liable for a specific amount of revenue, but be a portion of an estate or tenure which is liable for a specific amount, the proportion of Government revenue to be deemed payable in respect of the land taken shall be ascertained under the following rules :—

1*st*.—When an estate has, within twenty years next preceding the date of commencement of proceedings for acquisition of any land situate therein, been subjected to a detailed settlement, or has formed portion of an estate brought under division under Regulation XIX of 1814,* made after inquiry into and record of the assets of the estate, the Government revenue to be deemed payable in respect of the said land shall bear to the assets of the said land the same proportion as the Government revenue of the whole estate bears to the assets of the whole estate, as shown in the settlement or division proceedings.

2*nd*.—When there may have been no such settlement or division as aforesaid, then, if the area of the estate is known with accuracy, the amount of Government revenue to be deemed payable in respect of the portion of the land taken shall bear to the Government revenue of the whole estate the same proportion as the area of the said portion bears to the area of the whole estate.

---

*In the territories under the Lieutenant-Governor of Bengal this Regulation has been superseded by Act VIII (B.C.) of 1876.

3rd.—When the Government revenue deemed payable in respect of the land taken cannot be determined by either of the above rules, one-fourth of the net rent (*i.e.*, the gross rental less a deduction of 10 per cent. for the expenses of collection) of the said land shall be taken to be the amount of Government revenue thereon chargeable.

V.—In determining the amount of compensation to be tendered, the Collector shall take into consideration the fact that the land acquired is subject to the burden of the payment of Government revenue.

VI.—In the event of the proprietor declining to accept an abatement of revenue, such circumstance shall not entitle him to any compensation over and above the amount tendered on the original basis of calculation. In cases, however, in which the area of the portion of land acquired does not exceed one-twentieth part of the area of the estate, it shall be competent to the Revenue authorities, if the proprietor of the estate so desire, to pay to the proprietor the computed value of the revenue deemed payable in respect of such portion, on the condition of his continuing to pay the revenue of the entire estate without abatement : provided that, in computing the value of the revenue so assigned, the basis of calculation shall not exceed the number of years' purchase (if known) upon which the market-value of the proprietor's profits, *i.e.*, the tender of compensation, has been determined. Thus, if the market-value of the said profits has been computed at 12 years' purchase, the capitalized value of the revenue deemed payable in respect of the portion of land acquired shall be calculated at not more than 12 years' purchase of the amount of revenue in question.

VII.—When there is any doubt whether the land to be acquired is part of a revenue-paying estate or is revenue-free, the Collector shall, before making the reference to the Court, which under the circumstances he would be required to make by section 15 of the Act, determine the amount of revenue

which would be deemed payable in respect of the land acquired in the event of the land being adjudged by the Court to be a portion of the revenue-paying estate of which it is alleged to form a part.

VIII.—To enable the Collector to calculate accurately the additional compensation to be given under section 42 of the Act, and to enable him to keep up fully and clearly his registers of all lands occupied and compensation paid for them, the Collector shall invariably record separately his finding under the first head of section 24 of the Act, which concerns the market-value of the land, and also the specific portion of the compensation which he may award for any houses, trees or crops upon the land.*

IX.—The procedure laid down for a reference under section 15 shall be held applicable to a reference under section 43.†

X.—The procedure to be followed in the apportionment of the compensation awarded on account of lands taken up for temporary occupation shall be in accordance with the provisions of Part IV of the Act.

XI.—On the date on which payment of compensation in any case may become due under section 41 of the Act, the Collector shall tender the amount to such of the persons entitled to receive it as may be present at his office, in person or by agent duly authorized to receive the same, informing them at the same time that in the event of their refusal to accept the amount tendered no claim to interest will be entertained. Should any such person be absent and have no authorized agent at the Collector's Court, the Collector shall

*Rule VIII.—The additional compensation which was allowed by section 42 of Act X of 1870 is allowed by section 23, sub section (2) of Act I of 1894. Section 24 of Act X of 1870 corresponds with sub section (1) of section 23 of Act I of 1894.

† Rule IX.—The procedure for a reference to Court is laid down in sections 18 and 19 of Act I of 1894. Section 43 of Act X of 1870 corresponds to section 35 of Act I of 1894

serve a notice upon him, calling upon him to attend in person or by agent, within one week of his receipt of the notice, to receive the amount due to him, and warning him that, on failure to appear within the period above named, no interest whatever will be paid to him.

The Collector shall satisfy himself of the due service of the notice, and should endeavour, from time to time, to secure the presence of the parties to receive payment, so as to avoid, as far as possible, payment into the Treasury on deposit.

In the event of the payees not presenting themselves for payment within a year from the date of the award, the amounts due may be paid into the Treasury on revenue deposit and vouched for in the form prescribed by Rule 5 on page 30*a* of the Civil Account Code, Volume I, fourth edition. When the payees ultimately claim payment of sums placed on deposit, the amounts will be paid to them in the same manner as ordinary revenue deposits under the authority of the Collector.

Rules IX and X are no longer required, having regard to the provisions of section 35 of Act I of 1894.

Rule XI has also become inoperative by reason of the change in the law. By section 31 of Act I of 1894 the compensation awarded by the Collector, if not paid to the persons interested, is to be deposited in Court, and no interest will be payable thereon except in the case mentioned in section 34 where possession has been taken of the land before the date of the award.

Rules made by the Government of Bombay under section 59 of Act X of 1870.

(*Published in the "Bombay Gazette" of 13th March* 1873.)

1.—Whenever it shall appear to the Collector desirable that the Government revenue or huks of any kind shall be remitted in payment or part payment of the compensation to be awarded for land taken under this Act, he shall estimate the value of such revenue or huks, and deduct it from the estimated compensation to be awarded to the owner of the land.

2.—If the land has been surveyed and assessed to the land-revenue under the provisions of Act I of 1865, or when it bears an assessment according to existing practice, the value of the Government claims on such land shall be calculated at not less than twenty-five times the survey assessment; but houses, trees, crops, wells and improvements, shall be estimated separately on the best information available to the Collector.

3.—When the land to be taken under this Act has not been so surveyed and assessed under Act I of 1865, or does not bear an assessment according to existing practice, the Collector shall proceed to assess it on the best information he can procure, and the value of the Government claims on such lands shall be calculated at not less than twenty-five times the assessment fixed by the Collector with the approval of the Revenue Commissioner.

4.—When making an award of compensation to be given under section 42 of Act X of 1870, the Collector or Court shall record separately the compensation to be granted unde the first clause of section 24 of the Act, which concerns the

market-value of the land, and the portion of compensation to be granted under the 2nd, 3rd and 4th clauses of that section.

5.—The procedure required for a reference under section 15 shall be applicable to a reference under section 43.

6.—When the amount of compensation to be awarded under section 43 (for temporary occupation of land) has been fixed, and there is dispute as to the division of the amount among the persons interested, the Collector shall refer such dispute to the Court for decision, and the procedure prescribed by section 39 shall be applicable to such a reference.

7.—Any informality in the proceedings of the Collector or Court under this Act shall not vitiate the award, unless the interests of any party or parties are injuriously affected thereby.

Rules 4, 5 and 6 are no longer necessary, regard being had to the provisions of sections 26 and 35 of Act I of 1894.

"It is necessary also to bear in mind that the rules and instructions under the Land Acquisition Act of 1870 printed in the compilation of rules in force in the Revenue Department have not and never had the force of law, and are not therefore saved by section 2, clause (2). They may still be used as a general guide, but care must be taken to follow them no further than may be strictly consistent with the provisions of the new Act, and instructions should be applied for in regard to any new questions that may arise."—*Extract from a Resolution of the Government of Bombay in the Revenue Department, No.* 6188 *dated* 25*th July* 1894.

Extract from the Rules framed by the Government of the North-Western Provinces.

Rules for guidance in awarding compensation for lands required under Act X of 1870.

1. *Houses.*—The rental of houses shall be calculated, when possible, on the actuals of the three years preceding compensation: and the market-value shall ordinarily be *eight* times the average of such rental. Where no guide to the rental exists, the calculation shall be based upon an estimate of the cost of material and rebuilding, the former being deducted if made over to the proprietor. For the land occupied by the building compensation shall be given under Rule 9.

2. *Wells and tanks not used for agricultural purposes.*—The cost of reconstruction shall ordinarily be tendered as compensation under section 14 of the Act, provided:

(1) that if the well or tank has fallen into disuse, compensation shall be allowed on the present value of the materials only;

(2) that if the well or tank is in bad repair, deduction shall be made on this account.

3. *Wells or tanks used for agricultural purposes.*—The cost of constructing a similar new well or tank shall, with the same provisos as in Rule 2, be tendered as compensation; but—

(1) if the construction of a new well or tank diminishes the culturable area of any part of a cultivator's holding, compensation shall (if no compensation has been awarded under these rules for the lands occupied by the old well or tank) be tendered for such lands under the rules for awarding compensation to landlords and tenants for land;

(2) if the irrigated area of the holding is likely to be lessened in any way, compensation shall be tendered to the landlord by reducing his revenue by the difference between an irrigated and unirrigated revenue-rate on the land, and to the cultivator under Rule 14.

4. *Trees.*—The market value of timber, and eight times the annual value of fruit in the case of fruit trees, shall be tendered in compensation: provided that the owners may be given the option of cutting down trees without compensation for timber.

5. If any tenant possesses by local custom any right in the timber or produce of any tree, the award shall be apportioned according to the custom regulating the distribution of profits or the profits of the timber.

6. *Crops.*—In the case of ripe crops the owners shall be required to cut and remove them, and no compensation will be necessary. If it is necessary to cut an unripe crop, its value will be calculated at the estimated value of similar ripe crops in similar neighbouring land.

7. *Landholders' interests.*—*A. Cultivated land.*—(1) The recorded rental of the jamabandi shall be ascertained for that portion of the appropriated area which is occupied by tenants: and if the landowner object that the recorded rent is less than the rent actually paid, such objection shall not be heard.

(2) The annual value of that portion of the area appropriated, which, from being sír or other cause, is cultivated by the proprietor, shall be calculated at the recorded rents for similar neighbouring lands with similar advantages paid by tenants-at-will. If sír land is cultivated by sub-tenants, compensation shall be based on the rents recorded for such land.

(3) In the case of lands for which rents are paid in kind, if no money-rates for similar neighbouring lands with similar advantages exist, the annual value shall be estimated at the mean market-value of the landlord's share of the average recorded outturn during the past three years.

8. *B. Culturable land.*—(1) The rental of "cultivable land recently thrown out of cultivation" (meaning by that term land lying out of cultivation for a term less than three years) shall be estimated at not less than one-third, and not more than two-thirds of the rent of dry cultivated land of similar capacity, according as such land is ordinarily left waste for a longer or shorter term.

(2) The profits of cultivable land yielding assets (as from *dhák* jungle, grass, &c.,) or the piscary from tanks, shall be estimated at the average receipts of three years.

9. The revenue borne by the appropriated area, if not ascertainable from the record-of-rights, shall be calculated on the basis of the assessment rates on the different classes of soil contained in the area; that on *gauhán* land, for instance, being calculated at *gauhán* rates, that on *bhúr* land at *bhúr* rates. If no separate rates were assessed on classes of soils, the rate of the whole revenue on the total cultivated area of the *mahál* or *patti* may be taken, allowance in all cases being made according as the land taken up is above or below the average, and care being taken to exclude from the calculation any part of the revenue which is due to sayer assets or waste land.

The difference between the revenue, *plus* local and 12 per cent. cesses, and the rental, thus calculated, is the landlord's net profits.

10. The profits of land exempt from Government revenue, if in such land the proprietary and grantee right be distinct, and if settlement have been made between the proprietor and grantee, shall be calculated in the mode prescribed under Rule 7 for the calculation of land paying revenue to Government. If the proprietor and grantee are the same, and in all cases in permanently-settled districts the declared rental of the lands recorded in such maháls, checked by the recorded rents of similar land held by the same class of tenants in adjacent villages, after deduction of cesses, and in maháls paying

revenue, in the permanently-settled districts after deduction of cesses and revenue, shall form the basis of calculation.

11. The number of years' purchase of the profits to be allowed in the case of land assessed to land-revenue, or of which the land-revenue has been assigned or redeemed, must be determined by the Collector on a consideration of the market-value and local custom as to sale of such land ; but in the case of lands paying revenue to Government not more than 16 years' purchase, and in the cases of lands of which the land-revenue has been assigned or redeemed not more than 25 years' purchase, shall be paid without a reference to the Commissioner, under Rule 17. The provisions of this rule, together with those of Rule 9, clause 2, are applicable to land subject to málikána appropriated for railway purposes.

In the case of land held under a perpetual lease at a quit rent, the division of the compensation assessed by the Collector between the proprietor and the lessee shall *ordinarily* be made in the ratio of the profits they respectively derive from the land in question. But where, for any special reason, their respective interests in the land cannot equitably be estimated in this ratio, the division shall be made in such manner as may appear to the Collector to be just and reasonable. Where a lease of revenue-paying land purports to be in perpetuity, regard must be had to the extent to which the lessee's interest may be affected by the provisions of section 29 of the North-Western Provinces Rent Act, 1881.

12. In the case of cultivable land lying waste beyond the term of three years, or yielding no assets, or having no appreciable value owing to proximity to a town or village or otherwise, and not taken into calculation under the above rules, a price may be offered, not exceeding two rupees per acre. In the case of fruit and other grove lands compensation should be offered not exceeding Rs. 2 per acre *plus* the market-value of the timber, and in the case of fruit trees eight times the annual value of the fruit, under Rule 4 above.

13. In the case of barren land yielding no assets, or having no appreciable value from proximity to a town or village or otherwise, a nominal price shall be offered, not exceeding one rupee. In the case of such land, or of land under Rule 12, situate within, or in the vicinity of a town or village, compensation shall be based, if ascertainable, on the market-value of similar land. Should no selling price be ascertainable, compensation shall be estimated at eight times the annual value of any fees customarily paid to the proprietors by occupants of houses for the use and occupation of the land on which such houses are erected. In the absence of sales or fees from such land, a nominal price shall be paid, not exceeding one rupee per 100 square yards.

14. *Interests of tenants.*—The compensation tendered to tenants with rights of occupancy, or in the case of sír lands in consideration of the cultivating rights of a proprietor, shall not be less than three years' purchase, nor without a reference to the Commissioner more than six of the rental determined under Rule 7 (1) as the basis of compensation. In proportion as the rent approaches to a rack-rent, the number of years' purchase tendered in compensation shall be diminished. In the case of ex-proprietary tenants, 20 per cent. shall be added to the rental on which the compensation to tenants with rights of occupancy holding similar land is calculated.

A larger number of years' purchase should be awarded in cases where the tenant's position is much injured by the absence of other available land in the vicinity than in cases where other land is easily obtainable. To tenants-at-will, beside the compensation prescribed under Rule 6, one year's rent shall be awarded.

15. The compensation allowed to tenants at fixed rates in the permanently-settled districts shall be calculated at the market-rate of such rights *plus* 15 per cent. thereon authorized by section 42, provided that no more than twelve years'

purchase shall be paid without previous reference to the Commissioner.

16. The officer determining the amount of compensation awarded shall record clearly in every case for which no fixed rate of compensation is awarded the grounds on which his award is based.

17. Cases for which rules here laid down do not provide or in which the compensation provided appears, for any special reasons, inadequate or excessive, shall be forwarded for orders to the Commissioner of the Division, who, if he agrees with the Collector in recommending a departure from the rules, shall refer the case for instructions to the Board of Revenue.

18. Nothing in these rules shall be construed to override any of the provisions of section 24 or of section 42, Act X of 1870.

19. Care should be taken in every instance of permanent appropriation to add 15 per cent. to the ascertained market-value of the land under section 42. Arrangements should also be made for the payment of interest from the date of occupation to the date of payment of compensation, or to the date fixed for payment of compensation, whether the occupation is permanent or temporary.

Extract from the Rules framed for the Province of Oudh.

Rules for guidance in awarding compensation for lands required under Act X of 1870.

1. *Houses.*—The rental of houses shall be calculated, when possible, on the actuals of the three years preceding compensation : and the market-value shall ordinarily be *eight* times the average of such rental. Where no guide to the rental exists, the calculation shall be based upon an estimate of the cost of material and rebuilding, the former being deducted if made over to the proprietor. For the land occupied by the building, compensation shall be given under Rule 9.

2. *Wells and tanks not used for agricultural purposes.*—The cost of reconstruction shall ordinarily be tendered as compensation under section 14 of the Act, provided :

(1) that if the well or tank has fallen into disuse, compensation shall be allowed on the present value of the materials only ;

(2) that if the well or tank is in bad repair, deduction shall be made on this account.

3. *Wells or tanks used for agricultural purposes.*—The cost of constructing a similar new well or tank shall, with the same provisos as in Rule 2, be tendered as compensation ; but—

(1) if the construction of a new well or tank diminishes the culturable area of any part of a cultivator's holding, compensation shall (if no compensation has been awarded under these rules for the lands occupied by the old well or tank) be tendered for such lands under the rules for awarding compensation to landlords and tenants for land ;

(2) if the irrigated area of the holding is likely to be lessened in any way, compensation shall be tendered to the landlord by reducing his revenue by the difference between an irrigated and unirrigated revenue-rate on the land, and to the cultivator under Rule 15.

4. *Trees.*—The market-value of timber, and eight times the annual value of fruit in the case of fruit trees, shall be tendered in compensation : provided that the owners may be given the option of cutting down trees without compensation for timber.

5. If any tenant possesses by local custom any right in the timber or produce of any tree, the award shall be apportioned according to the custom regulating the distribution of profits or the profits of the timber.

6. *Crops.*—In the case of ripe crops the owners shall be required to cut and remove them, and no compensation will be necessary. If it is necessary to cut an unripe crop, its value will be calculated at the estimated value of similar ripe crops in similar neighbouring land.

7. *Landholders' interests.—A. Cultivated land.*—(1) The recorded rental of the jamabandi shall be ascertained for that portion of the appropriated area which is occupied by tenants : and if the landowner object that the recorded rent is less than the rent actually paid, such objection shall not be heard.

(2) The annual value of that portion of the area appropriated, which, from being sír or other cause, is cultivated by the proprietor, shall be calculated at the recorded rents for similar neighbouring lands with similar advantages paid by tenants holding at equitable rents. If sír land is cultivated by sub-tenants, compensation shall be based on the rents recorded for such land.

(3) In the case of lands for which rents are paid in kind, if no money rates for similar neighbouring lands with similar advantages exist, the annual value shall be estimated at the

mean market-value of the landlord's share of the average recorded outturn during the past three years.

8. *B. Culturable land.*—(1) The rental of "cultivable land recently thrown out of cultivation" (meaning by that term land lying out of cultivation for a term less than three years) shall be estimated at not less than one-third, and not more than two-thirds of the rent of dry cultivated land of similar capacity, according as such land is ordinarily left waste for a longer or shorter term.

(2) The profits of cultivable land yielding assets (as from *dhák* jungle, grass, &c ,) or the piscary from tanks, shall be estimated at the average receipts of three years.

9. The revenue borne by the appropriated area, if not ascertainable from the record-of-rights, shall be calculated on the basis of the assessment rates on the different classes of soil contained in the area ; that on *gauhán* land, for instance, being calculated at *gauhán* rates, that on *bhúr* land at *bhúr* rates. If no separate rates were assessed on classes of soils, the rate of the whole revenue on the total cultivated area of the *mahál* or *patti* may be taken, allowance in all cases being made according as the land taken up is above or below the average, and care being taken to exclude from the calculation any part of the revenue which is due to sayer assets or waste land.

The difference between the revenue, *plus* local and patwári rates and settlement cesses and the rental thus calculated is the landlord's net profits.

10 The profits of land exempt from Government revenue, if in such land the proprietary and grantee right be distinct, and if settlement have been made between the proprietor and grantee, shall be calculated in the mode prescribed under Rule 7 for the calculation of land paying revenue to Government. If the proprietor and grantee are the same, the declared rental of the lands recorded in such maháls, checked by the recorded rents of similar land held by the same class of tenants in

adjacent villages, after deduction of rates and cesses, shall form the basis of calculation.

11. The number of years' purchase of the profits to be allowed in the case of land assessed to land-revenue or of which the land-revenue has been assigned or redeemed, must be determined by the Collector on a consideration of the market-value and local custom as to sale of such land ; but in the case of lands paying revenue to Government not more than 16 years' purchase, and in the cases of lands of which the land-revenue has been assigned or redeemed not more than 25 years' purchase, shall be paid without a reference to the Commissioner, under Rule 17. The provisions of this rule, together with those of Rule 9, clause 2, are applicable to land subject to malikána appropriated for railway purposes.

In the case of land held under a perpetual lease at a quit rent, the division of the compensation assessed by the Collector between the proprietor and the lessee shall *ordinarily* be made in the ratio of the profits they respectively derive from the land in question. But where, for any special reason, their respective interests in the land cannot equitably be estimated in this ratio, the division shall be made in such manner as may appear to the Collector to be just and reasonable.

12. Where both superior and subordinate proprietary rights co-exist in the land, the compensation will be divided between the superior and the subordinate proprietors proportionately to the interest which each has in the property.

13. In the case of cultivable land lying waste beyond the term of three years, or yielding no assets, or having no appreciable value owing to proximity to a town or village or otherwise, and not taken into calculation under the above rules, a price may be offered, not exceeding two rupees per acre. In the case of fruit and other grove lands compensation should be offered not exceeding Rs. 2 per acre *plus* the market-value of the timber, and in the case of fruit trees eight times the annual value of the fruit, under Rule 4 above.

14. In the case of barren land yielding no assets, or having no appreciable value from proximity to a town or village or otherwise, a nominal price shall be offered, not exceeding one rupee. In the case of such land, or of land under Rule 13, situate within or in the vicinity of a town or village, compensation shall be based, if ascertainable, on the market-value of similar land. Should no selling price be ascertainable, compensation shall be estimated at eight times the annual value of any fees customarily paid to the proprietors by occupants of houses for the use and occupation of the land on which such houses are erected. In the absence of sales or fees from such land, a nominal price shall be paid, not exceeding one rupee per 100 square yards.

15. *Interests of tenants.*—The compensation tendered to tenants with rights of occupancy, or in the case of sír lands in consideration of the cultivating rights of a proprietor, shall not be less than three years' purchase, nor without a reference to the Commissioner more than six of the rental determined under Rule 7 (1) as the basis of compensation. The compensation tendered to statutory tenants shall not be less than two years' purchase, nor without a reference to the Commissioner more than four of the rental determined under Rule 7 (1) as the basis of compensation. In proportion as the rent approaches to a rack-rent, the number of years' purchase tendered in compensation shall be diminished. A larger number of years' purchase should be awarded in cases where the tenant's position is much injured by the absence of other available land in the vicinity than in cases where other land is easily obtainable. To other tenants, besides the compensation prescribed under Rule 6, one year's rent shall be awarded.

16. The officer determining the amount of compensation awarded shall record clearly in every case for which no fixed rate of compensation is awarded the grounds on which his award is based.

17. Cases for which rules here laid down do not provide or in which the compensation provided appears, for any special reasons, inadequate or excessive, shall be forwarded for orders to the Commissioner of the Division, who, if he agrees with the Collector in recommending a departure from the rules, shall refer the case for instructions to the Board of Revenue.

18. Nothing in these rules shall be construed to override any of the provisions of section 24 or of section 42, Act X of 1870.

19. Care should be taken in every instance of permanent appropriation to add 15 per cent. to the ascertained market-value of the land under section 42. Arrangements should also be made for the payment of interest from the date of occupation to the date of payment of compensation, or to the date fixed for payment of compensation, whether the occupation is permanent or temporary.

It cannot be too strongly impressed upon Revenue-officers that, in making use of the extensive power to invade private rights which is conferred by Act X of 1870, they should most scrupulously avoid any unnecessary aggravation of the hardship to which individuals may be exposed, by securing for them the prompt and immediate payment of adequate compensation, and by taking steps to relieve the lands, which may be appropriated, from the payment of Government revenue from the date on which the lands are occupied.

Rules promulgated by the Chief Commissioner of the Central Provinces.

Rules for the guidance of Collectors in remitting land revenue and in awarding compensation under Section 59 of Act X of 1870.

Remission of Revenue.

I.—The revenue and cesses to be remitted on the land shall stand in the same proportion to the total revenue and cesses of the mahal as the total rental or other assets of the land at settlement stood to the total settlement assets of the mahal.

II.—The rental of land which, being cultivated at settlement by its proprietor, paid no rent, shall be calculated at the settlement rent-rate for land of its class in the village or circle of villages.

III.—If the land taken up is situated within a malik makbuza holding, such holding shall be considered a separate mahal for the purpose of Rule 1.

The Award of Compensation.

Buildings, including wells and tanks not used for irrigation.

IV.—The award shall be based on (*a*) the present value of the materials *plus* (*b*) cost of construction at present rates, less the value of any materials made over to the proprietor: provided that, if the building have fallen into disuse, compensation shall be allowed on the present value of the materials only.

Wells and tanks used for irrigation.

V —Compensation shall be calculated in the manner laid down by Rule IV, with the additional proviso that if the

rental value of any land other than that taken up by Government be lessened in consequence of the taking up of a tank or well, compensation shall be given to the landlord of such land by a payment not exceeding sixteen times the annual reduction of rent or profits which he sustains in consequence, and to the tenant of such land by a payment representing, if he be an absolute occupancy tenant, not more than twelve times, if an occupancy tenant, not more than six times, and if an ordinary tenant, not more than three times the annual loss sustained by him—unless the Chief Commissioner for special reasons sanctions in any case a larger sum.

Trees.

VI.—The market-value of timber, and eight times the annual value of fruit in the case of fruit trees, shall be tendered in compensation, provided that the owner may be given the option of cutting down trees without compensation for timber.

If any tenant possesses by local custom any right in the timber or produce of any tree, the award shall be apportioned according to the custom regulating the distribution of profits or the profits of the timber.

Crops.

VII.—In the case of ripe crops, the owner shall be required to cut and remove them, and no compensation will be necessary. If it is necessary to cut an unripe crop, its value will be calculated at the estimated value of similar ripe crops in similar neighbouring land.

Non-Agricultural Land.

VIII.—The compensation awarded for non-agricultural land shall be based on its market value or on the market-value of similar land in its vicinity. Should no market-value be ascertainable a nominal price shall be awarded, which shall not, without the Chief Commissioner's sanction, exceed one rupee per 100 square yards.

Agricultural Land.

(1) Cultivated Land.

A—Landlords' interests.

*IX.—The compensation awarded to a landlord for cultivated land shall not, without sanction of the Chief Commissioner, be more than sixteen times the annual profits derived by him from it. The annual profits shall, in the case of land assessed to revenue, be considered to be the difference between the revenue *plus* cesses ascertained under Rule I, and the rent paid upon it at the time the land is taken up. In the case of land which is revenue-free the annual rental less any cesses payable upon it shall be taken as the annual profits.

X.—For the purpose of the preceding rule :—

(1) The annual rental shall, unless the land be cultivated by the landlord himself, be considered the rental recorded in the jamabandi of the year, and no objection shall be heard to the effect that such recorded rental is less than the net rental.

(2) In the case of land cultivated by the landlord himself the rental shall be calculated at the rates of recorded rents paid by ordinary tenants for similar land.

(3) In the case of land the rent of which is paid in kind, the annual money rental shall be estimated at the mean money value of the landlord's recorded share during the three years last preceding.

(2) Uncultivated but Cultivable Land.

XI.—Should uncultivated but cultivable land have been cultivated within the three years last preceding, compensation shall be paid at not less than one-third and not more than two-thirds of the rate which would be adopted for cultivated land of the same quality.

---

* *See* Circular No. VI—18, dated 19th December 1887.

XII.—For cultivable land which has not been cultivated for a longer period than three years or has never been cultivated, a price may be offered not exceeding two rupees an acre, unless it be shown that this is less than sixteen times the annual profit derived from such land, that is to say, the *sair* income from such land less any portion of the land-revenue which was presumably assessed upon such *sair* income.

(3) Uncultivable Land.

XIII.—For uncultivable land having no appreciable non-agricultural value (from proximity to a town or village, or otherwise) a nominal price shall be offered, not exceeding one rupee per acre.

B.—Tenants' interests.

XIV.—The compensation offered to tenants shall not

in the case of absolute occupancy tenants be more than 12 years' rental,

in the case of occupancy tenants be more than 6 years' rental,

in the case of ordinary tenants be more than 3 years' rental,

without the sanction of the Chief Commissioner.

XV.—A larger number of years' purchase should be awarded in cases where the tenant's position is much injured by the absence of other available land in the vicinity than in cases where other land is readily obtainable.

XVI.—Nothing in these rules shall be construed to override any of the provisions of section 24 or of section 42, Act X of 1870.

LOWER BURMA.

Extract from Instructions under the Land Acquisition Act, I of 1894.

19. In determining the amount of compensation the Collector has to give consideration to the six points set forth in section 23, of which the most important is the market-value of the land, including everything attached to the land. The market-value is the ascertained value *at the date of the declaration* required by section 6; but in considering the damage sustained by the person interested under the second, third, and fourth heads, the date at which the damage is to be estimated is the date of the Collector's taking possession of the land.

20. Lands which bear produce may be broadly classed under—

(i) paddy or other field crop lands ;

(ii) garden or fruit tree lands.

The market-value will be most correctly deduced from the current market-values of similar lands in the vicinity or in the same circle. Care must be taken that the lands with which comparison is made are really similar to the land which is to be acquired. The fact that the same rate of revenue assessment is paid on different lands does not necessarily show that these lands are of the same market-value. The points on which similarity should be sought are—

(i) natural fertility and kind of produce raised ;

(ii) advantages of situation ;

(iii) distance from market.

In settled tracts the survey maps, the Settlement Officer's classification of the soil, and the annual register of transfers of land should be consulted.

21. The following scale of compensation is laid down as a guide in default of evidence of market-value from sales elsewhere :—

(*a*) Landholder or grantee.	Six times the annual revenue on the land. If the land be not assessed to revenue, six times the annual revenue, which would be payable at rates paid on similar land.
(*b*) Non-landholder ...	A sum equal to one year's revenue on the land. If the land be fallow in a registered holding, the same rates of compensation as if the land were under cultivation.
(*c*) Trees	If they are fruit-trees, six times the annual value of the fruit less the revenue payable on them ; if they are not fruit-trees, the value of the timber.
(*d*) Land within village sites enclosed and part of a homestead.	A sum equal to the revenue on the area at the highest garden rate in the township.
(*e*) Land used for non-agricultural purposes, *e.g.*, brick-field, salt factory—	
(i) If landholder's rights have been acquired.	A sum equal to six times the highest land-revenue rate in the township on the area.

(ii) If landholder's rights have not been acquired.	A sum equal to one year's revenue at the highest land-revenue rate in the township.
(*f*) Land in towns held under lease.	Six times the annual rent.
(*g*) Land in towns under squatter tenure.	A sum equal to one year's rent.

22. If there is a crop on the ground, the crop must be valued separately. If the crop is not sufficiently advanced to admit of an estimate of actual outturn, the valuation must be made upon an estimate of the habitual outturn of the land. In settled tracts the Settlement Officer's statistics should be consulted.

23. The tender to be made by the Collector must of course include the value of any buildings.

In estimating the value of a house, consideration should be given to the actual cost of erecting a similar building less a certain percentage, generally from 5 to 15 per cent. per annum (according to material and description), for deterioration.

24. If any house, building, or tree standing on the land to be acquired should not be required by Government, the owner may be allowed the option of removing it within a reasonable period, to be fixed by the Collector, in which case the value of such materials (as determined in the award) will be deducted from the sum payable as compensation. If abandoned pagodas or kyaungs are standing on any land acquired under the Act, the Collector will have discretion to allow neighbouring villagers to remove the materials within a reasonable time.

25. Similarly, when land is available which may be given in lieu of the land under acquisition, an option of receiving it in exchange for the whole or any portion of the land of which he is being expropriated may (*vide* section 31 (3)) be

allowed to the owner on his consenting to allow a sum corresponding to its value to be deducted from the compensation awarded to him. The equivalent of the compensation due to such person may also be offered in the form of remission of land-revenue for the current year on other land held by him under the same title.

26. When compensation has to be awarded for *quasi*-public buildings, such as zayats, an offer should be made to remove and rebuild them in a suitable position at the expense of Government, unless the cost of removal and rebuilding would exceed the full value of the buildings: provided that all claim to the compensation awarded on account of such buildings is surrendered by the parties entitled to receive it.

Abatement of Revenue.

36. In every case of acquisition of land under the Act the Deputy Commissioner shall cause to be deducted from the area of each holding affected the area acquired, and shall make a corresponding deduction in the revenue (if any) payable on such land in the revenue-roll of the year concerned.

INDEX.

The figures given refer to the pages.

ABATEMENT
of rent of land acquired, 54.
of revenue, 95, 100, 113, 114, 121.

ACQUISITION, *see* LAND.
notification of likelihood of, 8.
declaration of intended, 10.
Collector when to take order for, 11.
in cases of urgency, 18.
of land for Companies, 65.
Government not always bound to complete, 69.
of part of a house or building, 70.
for local authority or Company, 74.
of mines, 85.

ACTION, *see* SUIT.

ACTS OF THE LEGISLATIVE COUNCILS
1857—VI, 3, 4, 18, 59, 62, 72.
1858—XXXV, 7.
1861—II, 64.
1863—XXII, 82.
1865—I (Bombay), 100.
1866—XIV, 13, 68.
1869—XIV (Bombay), 5.
1870—VII, 47.
——X, 2, 8, 10 13, 14, 18, 22, 28, 43, 45, 47, 49, 58, 67, 71, 72, 75, 76, 77, 81, 82, 83, 84, 87, 91, 93, 94, 95, 98, 100, 102, 107, 108, 113, 114.
1871—XXXIII, 82.
1874—XIV, 1.
1876—III (Bengal), 11.
——VIII (Bengal), 96.
1877—XV, 64, 76.
1880—VI (Bengal), 5.

ACTS OF THE LEGISLATIVE COUNCILS—(*Continued.*)
1881—XVIII, 83.
1884—XVIII, 2.
1885—XVIII, 3, 18, 74, 79—94.
1886—XI, 11, 65.
1887—I, 77.
——XII, 5.
1890—VIII, 7.

ADDITIONAL COMPENSATION
for compulsory acquisition, 25.

ADDITIONS
to rules under the Act, 76.

ADJOURNMENT
of enquiry by Collector, 17.

AGENTS
authorized to receive service, 12.

AGREEMENT
for the temporary occupation of land, 63.
to be entered into by Company with Secretary of State, 66, 67.
to be published in *Gazettes*, 67.
by Government to provide land, 67.
how to be proved, 67.
not chargeable with stamp-duty and no fee for copy, 75.

AJMIR
Land and Revenue Regulation II of 1877, 83.

ALIENATE, *see* INCOMPETENT.

ALTERATIONS
of rules under the Act, 76.

AMENDS,
tender of, for act done in pursuance of the Act, 75.

AMOUNT, *see* COMPENSATION, AWARD, TENDER.

APPEAL
from decision of Court to High Court, 76.

APPLICATION
to Collector to make reference, 20
to invest money deposited in Court, 61.
to acquire land temporarily occupied, 64
to take the whole of a house, &c, 70.

APPOINTMENT
of special officer as Collector under the Act, 4.
of special officer to perform functions of the Court, 4.
of officer to hold enquiry under s. 40, p. 66.
of officer to inspect mines, 86, 92.
see GOVERNMENT, OFFICER OF.

APPORTIONMENT
of compensation may be specified in Collector's award, 16.
may be referred to Court, on application, 20.
or by Collector of his own motion, 49.
principles of, 50—55.
of compensation for temporary occupation of land, 63.

ARABLE LAND,
immediate possession may be taken of, 18.
may be occupied temporarily, 63.

AREA
to be stated in declaration, 10.
to be ascertained by Collector, 11.
to be stated in notice, 12, and in Collector's award, 14.
person interested may prefer objection as to, 20.
to be stated in reference to Court, 22.

ATTENDANCE
of witnesses before Collector, 17.
of persons interested, 17.
of witnesses before officer enquiring into proposed acquisition by Company, 66.

AWARD
to be made by Collector, 14.
matters to be mentioned in, 14.
to be final and conclusive between Collector and persons nterested, 16.
notice of, to be given to persons not present, 16.
objections to, 20.
of Court, to be in writing, signed by Judge, 47.
to specify items of compensation separately and amount of costs, 47.
may direct payment of interest on excess awarded, 48.
to specify particulars of apportionment, 49.

AWARD—(*Continued.*)
to be followed by possession, 17, and by payment or deposit of compensation money, 55.
not liable to stamp-duty, 75.
no fee chargeable for copy of, 75.

BENGAL
Government rules under Act X of 1870, 95.
see ACTS.

BOMBAY,
surrender of possession how enforceable in, 69.
Government rules under Act X of 1870, 100.
see ACTS.

BORE
power to, 9.

BOUNDARIES
to be set out in preliminary survey, 9.
penalty for displacing, 68.

BRITISH INDIA,
Act extends to whole of, 1.

BUILDING
not to be entered without notice, 9.
not to be taken possession of without notice, 19.
part only not to be taken, except with owner's consent, 70.

BURMA,
rules for determining compensation in, 118.

CALCUTTA
surrender of possession how enforceable in, 69.

CENTRAL PROVINCES
rules under Act X of 1870, 114.

CHANGE
of residence, expenses of, to be included in compensation, 24, 40

CHIEF REVENUE OFFICER
to decide as to damage done in preliminary survey, 9.

CLAIM
to compensation to be invited by Collector, 12.
refusal or omission to make, 21, 46.
amount awarded not to exceed, 46.

CLAIMANT, *see* PERSON INTERESTED.

CODE OF CIVIL PROCEDURE
made applicable to summoning witnesses by Collector, 17.
made applicable to enquiry into utility of work projected by Company, 66.
applicable to proceedings before Court, 76.
to regulate appeal, 76.

CODE, PENAL, *see* INDIAN PENAL CODE.

COLLECTOR,
definition of, 4.
may appoint guardian *ad litem*, 7.
to give notice that land is likely to be required, 8.
to assess damage in preliminary survey, 9.
to take order for acquisition, 11.
to cause land to be marked out and measured, 11.
to give general and special notice, 12.
empowered to call for statement of interests, 13.
to enquire into value and claims and to make an award, 14.
empowered to enforce attendance of witnesses, &c., 17.
may adjourn enquiry, 17.
to be guided by ss. 23 and 24, 17.
when empowered to take possession, 17.
when in case of urgency, 18.
to offer compensation for crops and trees and other damage, 19.
to refer objections to Court, 20.
what statement to make to Court, 22.
when Court to serve notice on, 23.
when to pay costs, 47.
to pay interest on excess awarded by Court, 48.
may refer dispute as to apportionment to Court, 49.
to tender payment on making award, 55.
when to deposit in Court, 56.
may make arrangements with persons having limited interest, 56.
to pay interest if possession is taken before award, 61.
empowered to procure the temporary occupation of land, 63.
to refer difference as to compensation to Court, 63.
when to take possession of such land, 63.
to restore possession of such land, 64.
to refer disputes to Court, 64.

COLLECTOR—*(Continued.)*
notices to be signed by or by order of, 68.
how to obtain possession if opposed, 69
to determine compensation when acquisition is not completed, 69.
to refer to Court question whether land forms part of house, 70.
may abstain from acquiring mines, 84.
may apply Mines Act to pending cases, 93.

COMMISSIONER
of Police to enforce surrender of possession, 69.

COMMITTEE
of lunatic, how far entitled to act, 6.

COMPANY,
definition of, 5, 94.
declaration may issue when compensation is payable by, 10.
may acquire temporary use of land, 63.
officer of, may be authorized to enter and survey, 65.
to execute agreement with Secretary of State, 66.
sections 39 to 42 not applicable when Government is bound to provide land for, 67.
to pay charges of acquisition, 74.
may adduce evidence as to compensation, 74.
application of Mines Act to land transferred to, 93.

COMPENSATION
for damage done in preliminary survey, 9.
for land acquired, claim to be made to Collector, 12.
Collector to determine amount, and award it, 14.
for crops and trees in case of immediate possession, 19.
objections to be referred to Court, 20.
matters for which compensation will be allowed, 24.
additional, 25.
matters for which compensation will not be allowed, 41.
limits of, 46.
items to be specified separately in award, 47.
when amount awarded by Court exceeds amount awarded by Collector, 48
apportionment of, 49—55.
when Collector may pay, 55.
when he must deposit in Court, 56.
arrangement in lieu of money, 56.

COMPENSATION—(*Continued.*)
investment by order of Court, 59.
interest when possession is taken before award, 61.
for temporary occupation and use of land, 63.
and for damage done therete, 64.
when acquisition is not completed, 69.
for mines or minerals, 83, 85.
how to be ascertained, 86.
for injury done to mines, 90.
for injury done to adjacent lands, 91.

COMPULSORY ACQUISITION,
additional compensation for, 25.

CONDITION
of land on expiry of occupation, 64.

CONDITIONS
on which work shall be executed and maintained, 66.

CONSENT
of occupier to enter building, 9.
of Local Government to acquisition by Company, 65.

CONSTRUCTION
of work of public utility, 66.

CO-PROPRIETOR,
statement of interest of, 13.
see PERSON INTERESTED.

COPY
of award or agreement to be given free of charge, 75.

COSTS
to be stated in award, and by what persons and in what proportions they are to be paid, 47.
of investment of money deposited in Court, 60.
when Government withdraws from acquisition, 69.
may be recovered from local authority or Company 74.

COURT,
definition, 4.
Local Government may appoint special judicial officer, 4.
reference to, by Collector, 20.
statement of reference what to contain, 22.

COURT—(*Continued.*)
to serve notices, 23.
scope of enquiry by, 23.
enquiry to be in open Court, 24.
matters to be considered by, 24.
matters to be neglected by, 41.
limitations as to award of, 46.
Judge to decide as to sufficiency of reason for omitting to make claim, 46.
award to be signed by Judge, 47.
to award costs, 47.
may direct payment of interest on excess awarded, 48.
reference to, as to apportionment, 49.
deposit in, 56.
investment of money deposited in, 59.
reference to, as to compensation for temporary use of land, 63.
or as to condition of land on expiry of term, 64.
mode of service of notice by, 68.
reference of dispute as to whether land forms part of house, &c., 70
Code of Civil Procedure to apply to proceedings before, 76.
appeal to High Court from award of, 76.

CROP
may be cut in preliminary survey, 9.
compensation to be given for, 9, 19, 24.
particulars to be stated in order of reference, 22.
damage to, to be considered in determining compensation, 24.

DAMAGE
in preliminary survey to be assessed by Collector, 9.
for sudden dispossession, 19.
to be stated in reference to Court, 22.
for standing crops or trees, 24.
by severance, compensation for, 24.
when claim for such damage is unreasonable or excessive, 70.
by injury to other property or earnings, 24.
from diminution of profits, 24.
non-actionable, not to be compensated, 41.
prospective, not to be compensated, 41.
to land temporarily occupied, compensation for, 64.

DAMAGE—(*Continued.*)
when acquisition is not completed, 69.
to surface by improper working of mines, 88.
by reason of severance of mines, 90.
to land lying over mines, 91.

DAMAGES, *see* AMENDS.

DAMAGING
trench or mark made punishable, 68.

DECLARATION
that particular land is needed for a public purpose, 10.
not necessary in certain cases, 71.
that mines are not needed, 83.

DEPRECIATION, *see* DAMAGE.

DEPUTY COMMISSIONER
included in definition of Collector, 4.

DESTROYING
trench or mark made punishable, 68.

DIFFERENCE, *see* DISPUTE.

DIG,
power to, 9.

DISABILITY
of person interested, 6, 7.

DISINCLINATION
to sell not to be taken into consideration, 41.

DISPLACING
trench or mark made punishable, 68.

DISPUTE
as to damage done in survey, 9.
as to measurement, value, title or apportionment, before Collector, 14.
as to value of crops or trees, 19.
may be referred to Court on application of objector, 20.
as to apportionment, 14, 20, 49, 55.
as to compensation for land temporarily occupied, 63.
as to condition of land on expiry of agreement, 64.
or as to any matter connected with agreement, 64.

DISTRICT
to be stated in declaration, 10.

DOCUMENT
referring to Act X of 1870, how to be construed, 2.
production of, may be compelled by Collector, 17.
production of, may be compelled by officer holding enquiry under s. 40, p. 66.

DWELLING-HOUSE, *see* HOUSE.

EARNINGS,
loss of, to be compensated, 24.

EASEMENT,
person interested in, included in definition, 3.

ENCUMBRANCES,
Collector may require statement of, 13.
land acquired free from, 17, 18.

ENQUIRY
by Collector into objections as to measurement, value and claims, 14.
may be adjourned, 17.
when land is required by a Company, 66.

ENTITLED
to act, definition of persons, 6.
to compensation, may recover from recipient, 56.

EVIDENCE,
declaration to be conclusive, that land is needed, 10.
Collector's award to be conclusive, as to area, value and apportionment, 16.
award conclusive, as to apportionment, if persons agree, 49.

EXTENT
of application of the Act, 1.
see AREA.

FEE,
not to be charged for copy of award or agreement, 75.

FENCE
may be cut for preliminary survey, 9.

FINE
for intentional omission to furnish statement, 13.

FINE—(*Continued.*)
for wilful obstruction or mischief, 68.
for refusal to allow inspection of mines, 92.

GARDEN, *see* HOUSE.

GAZETTE OF INDIA,
agreement between Government and Company to be published in, 67.

GAZETTE, LOCAL,
publication of notification that land is likely to be needed, 8.
publication of declaration that land is needed, 10.
publication of agreement with Company, 67.
publication of rules, 76.
publication of extension of Mines Act, 81.

GOVERNMENT
may appoint special officer as Collector or Court, 4.
may notify that land is likely to be needed, 8.
may authorize preliminary survey, 8.
may declare that land is needed, 10.
may acquire land for a public purpose or for a Company, 10.
may direct Collector to take order for acquisition, 11.
may direct Collector to take immediate possession, 18, 19.
may direct Collector to procure land for temporary occupation and use, 63.
to acquire such land if required to do so, 64.
may authorize officer of Company to exercise certain powers, 65.
previous consent of, necessary before land is acquired for a Company, 65.
to direct enquiry as to utility of work and necessity of acquisition, 66.
to acquire agreement from Company, 66.
may withdraw from acquisition unless possession has been taken, 69.
may order acquisition of the whole land when claim for severance is excessive, 70.
may make rules under the Act, 76.
rights of, to mines and minerals not affected, 82.
may declare that mines and minerals are not required, 83.
may cause mines to be inspected, 85, 92.
may prevent or restrict working of mines, 86.

GOVERNMENT—(*Continued.*)
may repair damage or remove obstruction, 88.
must pay compensation if working prevented or restricted, 86.
and for injury done to mines, 90.
and for injury to surface lands, 91.
may take measures to ensure safety of surface, 92.

GOVERNMENT, OFFICER OF,
may be specially appointed to perform functions of Collector, 4.
or of the Court, 4.
may be authorized to survey, 8.
to pay for damage, 9.
may sign declaration if authorized to certify orders of Government, 10.
may be authorized to direct Collector to take order for acquisition, 11.
may be appointed to enquire into utility of work proposed by Company, 66.
to report result of enquiry to Government, 66.

GOVERNOR-GENERAL IN COUNCIL
may prescribe rules for the acquisition of land by Companies, 65.
may prescribe rules for agreement with Companies, 66.
to sanction rules having the force of law, 76.
may prescribe the manner of publishing statement under s. 3 of Mines Act, 84.
or declaration under s. 5, p. 86.
may prescribe dimensions of air-ways, &c., in mines, 90.

GROUND, *see* LAND.

GROUNDS
of award of compensation by Collector, 22.
of award of Court, 47.

GUARDIAN,
of minor, how far entitled to act, 6, 7.

HIGH COURT,
appeal to, from decision of Court, 76.

HOUSE
not to be entered without notice, 9.
not to be taken possession of without notice, 19.
part only not to be acquired, 85.

IMMOVEABLE
property, injury to other, 24.
IMPRISONMENT
for wilful omission to supply statement, 13.
for filling trenches or destroying landmarks, 68.
IMPROVEMENTS
after date of declaration without sanction of Collector, 42.
INCOMPETENT
to alienate, persons interested, 7.
compensation to be invested by Court, 59.
INCREASE
of value due to use of land after acquisition, 41, 42.
INDIAN PENAL CODE
sections 175 and 176 made applicable, 13.
INJURIOUSLY AFFECTED, *see* DAMAGE.
INSPECTION
of plan to be allowed, 10.
of mines, 85, 92.
INTEREST
on excess compensation awarded by Court, 48.
when possession is taken before award, 61.
on money invested, 60, 61.
in land, *see* PERSON INTERESTED.
INVESTMENT
of compensation money when owner is incompetent to alienate, 59.
of money deposited in Court in other cases, 61.
JUDGE, *see* COURT.
LAND,
definition, 2.
power to survey land likely to be needed, 8.
declaration of intended acquisition, 10.
after declaration to be marked out and measured, 11.
notice of intended acquisition to be given on or near the land by Collector, 12.
statement of interests in, 12, 13.
enquiry by Collector into measurements and value of, 14.

LAND—(*Continued.*)
Collector's award to state true area of, 14.
when possession may be taken, 17.
in case of urgency, 18.
objection as to measurement of, or compensation for, to be referred to Court, 20
situation and extent to be noted in Collector's statement on reference to Court, 22
market-value to be awarded, and compensation for damage by severance or injurious affection, 24
matters not to be taken into consideration in determining amount of compensation of, 41.
temporary occupation and use of waste or arable land, 63.
when possession of such land may be taken, 63.
restoration on expiry of term, 64.
dispute as to condition of, on expiry of term, 64.
acquisition of, for Companies, 65—67
Government not bound to complete acquisition of, 69.
mines or minerals lying under, need not be taken, 83.
see MINES.

LEGALLY BOUND,
persons required to make statements, 13.

LEVELS
may be taken in preliminary survey, 9.

LIABILITY
of person required to deliver statement, 13.
of recipient of compensation, 56.
of person obstructing or displacing landmarks, 68.
of person refusing to allow inspection of mines, 92.

LIMITATION OF TIME
as to appearance before Collector, 12
as to making statements before Collector, 13.
in taking possession in case of urgency, 18, 19
for application to Collector for reference to Court, 20, 21.
for temporary occupation of land, 63.
in case of suit for anything done in pursuance of the Act, 75.

LIMITED INTEREST,
procedure where owner has, 56.

LINE
may be laid down in preliminary survey, 9.

LOCAL AUTHORITY,
definition of, 94.
application of Mines Act to land transferred to, 93.

LOCAL EXTENT
of the Act, 1.
of the Mines Act, 81.

LOCAL GAZETTE, *see* GAZETTE.

LOCAL GOVERNMENT, *see* GOVERNMENT.

LUNATIC,
committee or manager of, entitled to act, 6, 7.

MADRAS,
surrender of possession how enforceable in town of, 69.

MAGISTRATE
may convict for obstructing or destroying landmarks, 68.
may enforce surrender of land, 69.

MANAGER
of lunatic or idiot, how far entitled to act, 6, 7.

MANUFACTORY,
part only not to be taken, 69.

MAP, *see* PLAN.

MARKET-VALUE
at date of declaration to be considered, 24.
percentage on, to be awarded in consideration of compulsory nature of acquisition, 25.

MARKS,
power to place, 9.
Collector to place, 11.
displacement of, made punishable, 68.

MARRIED WOMAN
subject to English law entitled to act, 6.

MATERIALS
taken from land temporarily occupied, 63.

MEASUREMENT,
Collector to make, 11.

MEASUREMENT—(*Continued.*)
objection as to, before Collector, 14.
reference to Court as to, 20.

MINERALS, *see* MINES.

MINES,
English rule as to, 3.
Land Acquisition (Mines) Act, 81—94.
right of Government in mines saved, 82.
declaration that mines are not needed, 83.
notice to be given before working, 85.
power to prevent or restrict working, 85.
mode of determining compensation, 86.
if compensation is not given, may be worked in a proper manner, 87.
communications in, 90.
compensation for injury by severance, 90.
compensation to surface owner, 91.
power to inspect, 92.
penalty for refusal to allow inspection, 92.
if worked improperly, power to make safe the surface, 92.
application of Mines Act to pending cases, 93.

MINORS,
guardians of, how far entitled to act, 6, 7.

MORTGAGEE,
statement of interest of, 13.
see PERSON INTERESTED.

MOVEABLE
property, injury to, 24.

NAMES
of persons interested to be stated to Collector, 13.
to be given in statement of reference to Court, 22.

NON-ACTIONABLE
damage to be neglected, 41.

NON-ATTENDANCE
of person interested before Collector immaterial, 16.

NORTH-WESTERN PROVINCES
rules for awarding compensation in, 102.

NOTICE
of notification that land is likely to be needed, 8.
before entry of building, &c., 9.
of intended acquisition, general and special, 12.
of Collector's award to be given to parties not present, 16.
when immediate possession of building is required, 19.
on whom to be served by Court, 23.
of purpose for which land is temporarily needed, 63.
mode of service of, 68.
to take the whole of a house, manufactory or building, 70.
of suit for anything done in pursuance of Act, 75.
of intention to work mines, 85.

NOTIFICATION
that land is likely to be needed, 8.
of agreement between Government and a Company, 67.
of rules under the Act, 76.

OBJECTION
to measurement may be taken before Collector, 14.
may be taken to Collector's award, 20.

OBSTRUCTION
of authorized acts made punishable, 68.
in taking possession, 69.
by improper working of mines, 88.
of inspection of mines, 92.

OCCUPATION
occupant may remain in, till land is needed, 18.
of land temporarily, 63.

OCCUPIER
of building to have notice of entry, 9.
of land acquired may remain in possession, 18.
see PERSON INTERESTED.

OFFICER OF COMPANY, *see* COMPANY.

OFFICER OF GOVERNMENT, *see* GOVERNMENT, OFFICER OF.

OMISSION
to make claim, 46.

OPPOSITION, *see* OBSTRUCTION.

OUDH
rules for awarding compensation in, 108.

OUTLAY
in anticipation of acquisition, 42.

OWNER, *see* PERSON INTERESTED.

PAYMENT
for damage in preliminary survey, 9.
for crops and trees when immediate possession is taken, 19.
amount paid to be entered in statement of reference, 22.
of additional compensation, 25.
of interest, 48, 61.
to be tendered by Collector, 55.
when not to be made, 56.
receipt of, under protest, 56.
not to affect liability of recipient, 56.
of interest on compensation money invested, 60, 61.
of compensation for temporary use and occupation, 63.
of damage not provided for by agreement, 64.
of Collector's charges when land is acquired for a local authority or a Company, 74.
no land to be acquired under the Act unless payment is to be made by a Company or wholly or partly out of public revenues or a local fund, 10.

PENAL CODE, *see* INDIAN PENAL CODE.

PENALTY
for omission to file statement, 13.
for obstruction, &c., 68.
for refusal to allow inspection of mines, 92.

PERSON INTERESTED,
definition, 3.
who are entitled to act, 6.
includes owner, occupier, co-proprietor, sub-proprietor, mortgagee, tenant and others, 13.
and owner, occupier and lessee of mines, 104.
notice to appear before Collector and make claim, 12.
Collector empowered to call for statement of persons interested, 13.
Collector to enquire into respective interests, 14.
Collector's award binds them whether present or not, 16.
Collector to give notice of award to those not present, 16.
may be compelled to attend Collector's enquiry, 17.

PERSON INTERESTED—(*Continued.*)
may apply to have the matter referred to Court, 20.
to be named in Collector's statement on reference, 22.
to be served with notice by Court if interested in objection, 23.
matters for which entitled to compensation, 24.
matters for which not entitled to compensation, 41.
limits of compensation when claim has been made and in case of omission, 46.
in what case to pay costs, 47.
apportionment of compensation, when persons agree, 49.
in case of dispute, 49.
entitled to compensation for damage done in preliminary survey, 9.
and for crops and trees, 19, 22, 24.
payment of compensation to, 55.
money to be deposited in certain cases, 56.
procedure when owner has limited interest, 56.
investment when owner is incompetent to alienate, 59.
in land needed for temporary occupation to have notice, 63.
and to have compensation, 63, 64.
and may require Government to acquire it permanently, 64.
disputes as to condition of land, 64.
mode of service of notice on, 68.
entitled to compensation when Government withdraws from acquisition, 69.
may require the whole of a house, etc., to be taken, 70.
to have copy of order when whole of land is taken, 71.

PLAN
to be open to inspection, 10.
to be made by Collector, 11.

POSSESSION,
notice that Government intends to take, 12.
when Collector may take, 17.
when in case of urgency, 18.
interest to be paid when possession is taken before award, 61.
when Collector may take, of land needed for temporary use and occupation, 63.
mode of enforcing surrender of, 69.
Government cannot withdraw from acquisition after taking, 69.

POST,
when notice may be sent by, 13.
POWER
to enter and survey land and take levels, 8.
to dig or bore, &c., 9.
to set out boundaries and line and to mark them, 9.
to clear land, 9.
to acquire the land after declaration, 10.
of Collector to require statement of persons interested, 13.
to enforce the attendance of witnesses and parties interested, 17.
to adjourn enquiry, 17.
to take possession, 17.
to take immediate possession in case of urgency, 18.
to occupy land temporarily, 63.
of Company to enter and survey, 65.
of Magistrate to enforce surrender of possession, 69.
to inspect the working of mines, 85, 92.
see GOVERNMENT, COLLECTOR, COURT.
PROCEEDINGS
commenced under Act X of 1870, 2.
before Collector, 14—17.
before Court, 20—48.
in apportionment cases, 49.
in regard to temporary occupation of land, 63, 64.
in enquiry under s. 40, p. 66.
provisions of Code of Civil Procedure made applicable to, 76.
no proceedings to be commenced for anything done in pursuance of the Act without notice, 75.
PRODUCTION OF DOCUMENTS,
Code of Civil Procedure applicable on enquiry by Collector, 17.
on enquiry under s. 40, p. 66.
PROFITS,
of land, Collector may call for statement of, 13.
damage for diminution of, 24.
see EARNINGS.
PUBLIC,
terms on which the public may use a Company's work, 66.
PUBLICATION
of notification that land is likely to be needed, 8.

PUBLICATION—(*Continued*)
of declaration that land is needed, 10.
of general notice on or near the land, 12.
of agreement with Company, 67.
of rules framed under the Act, 76.

PUBLIC NOTICE, *see* NOTICE.

PUBLIC PURPOSE,
land likely to be needed for, 8.
land needed for, 10.

PUBLIC REVENUES,
land to be paid for out of, may be acquired under the Act 10.

PUBLIC UTILITY,
Government to be satisfied that work is of, 66.

PUTNIDAR
when entitled to compensation, 67.

RAIYAT
when entitled to compensation, 53.

REFERENCE TO COURT,
shall be made on application by person interested, 20.
what Collector is to state to Court, 22.
may be made in dispute as to apportionment, 49.
as to sufficiency of compensation for land temporarily occupied, 63.
as to condition of land on expiration of term, 64.
as to any matter connected with agreement, 64.
as to compensation when Government withdraws from acquisition, 69.
as to question of land being part of house, &c., 70.

REFUSAL
to allow inspection of mines, 109.

REMISSION, *see* ABATEMENT.

RENTS,
Collector may call for statement of, 13.

REPEAL
of Acts, 2.

RESIDENCE,
expenses of change of, 24.

RESTORATION
of land after temporary occupation, 64.

REVENUE, *see* ABATEMENT.

RIGHT
of occupancy, *see* RAIYAT.
of way, land acquired free from, 18.
see EASEMENT, TITLE.

RULES
under Act X of 1870 to be deemed made under this Act, 2.
for determining amount of compensation, 24—48.
for acquisition of land for Companies, 65.
for agreements with Companies, 66.
for enforcing the provisions of the Act, 76.
of Local Governments, 95—121.

SCHEDULE
of notices and written statements to be attached to Collector's statement on reference to Court, 22.

SECRETARY
to Government to sign declaration, 10.
of State, Company to execute agreement with, 66.
agreements to provide land executed by, 67.

SERVANTS
of authorized officer may enter and survey, 8.

SERVICE
of notices by Collector, 12.
of notices by Court, 23.
mode of, 68.
on authorized agents of absentees, 13.
of notice regarding land needed temporarily, 63.

SEVERANCE,
damage by, *see* DAMAGE.

SIGNATURE
of Secretary to declaration, 10.
of Collector to award, 14.
of Judge to award, 47.
of officer on copy of notice under s. 4, p. 68.
by or by order of Collector or Judge on copy of other notices, 68.

STAMP-DUTY
not chargeable on statement of claim, award or agreement, 87.

STATEMENT
of interests and claims and objections to measurement, 12.
may be required to be made in writing, 12.
of other persons interested, 13.
of rents and profits, 13.
persons required to make, to be deemed legally bound, 13.
on reference to Court, 22.

SUB-PROPRIETOR,
statement of interest of, 13.

SUIT,
not to be commenced without notice, 75.
no compensation for damage which would not render private person liable to suit, 41.

SUMMONS,
Collector may issue, under Code of Civil Procedure, 17.
may be issued by officer holding enquiry under s. 40, p 66.

SURRENDER
of possession, how to be enforced, 69.

SURVEY,
power to make preliminary survey, 8.

TEMPORARY
occupation and use of land, 63, 64.

TENANT,
statement of interest of, 13.
with right of occupancy, 53.

TENDER
of compensation for damage done in survey, 9.
of compensation for crops and damage in case of sudden dispossession, 19.
of payment of compensation, 55.
for damage to land temporarily occupied not provided for by agreement, 64.
of amends for anything done in pursuance of Act, 75.

TERMS
on which land may be held by Company, 66.

TERMS—(*Continued.*)
on which public may use the work, 66.
agreement as to, to have the force of law, 67.

TERRITORIAL
division to be stated in declaration, 10.

TIME
for notice of entry into building, 9.
for making claims or objections to measurement, 12.
for filing statements of other persons interested, and of rents and profits, 13.
for taking possession, 17, 18.
for taking possession of building, 19.
for applying for reference to Court, 20, 21.
for payment of compensation, 55.
for which land may be temporarily occupied, 63.
for enquiry as to projected work by Company, 66.
within which Company to execute work, 66.

TITLE,
of Government in land acquired, 17, 18.
of Company in land acquired, 66.
statement of, by person interested, 12.
statement of, of other persons, 13.
Collector to enquire into, 14.
objections as to, to be referred to Court, 20.
disputes as to, may be referred to Court, 49.
compensation to be deposited in case of dispute as to, 56.
procedure when owner has limited interest, 56.
when owner is incompetent to alienate, 59.
see ENTITLED, PERSON INTERESTED.

TRANSFER
of land to Company, 66.

TREES,
compensation to be given for, 19, 22, 24.

TRENCH
may be cut in preliminary survey, 9.
penalty for filling in, 68.

TRUSTEES
entitled to act for persons interested, 6.

UNFITNESS
of land for former purpose, 64.

URGENCY,
possession in case of, 18.
not to be considered in determining compensation, 41.

UTILITY
of work, enquiry as to, 66.

VALUATION, *see* COMPENSATION.

VALUE, *see* MARKET-VALUE.

VEST,
land to, free from incumbrances, 17, 18.

VILLAGE-SITES
when may be acquired under the Act, 5.

WASTE LAND
immediate possession may be taken in case of urgency, 18.
may be occupied temporarily, 63.

WITHDRAWAL
of Government from acquisition before possession taken, 69.

WITNESSES, *see* ATTENDANCE.

WORK
line of, may be set out, 9.
of public utility, 66.

WORKMEN
of authorized officer may enter and survey, 8.

WRITING,
notice before entering building under s. 4 to be in, 9.
Collector may require statement of claim in, 12.
Collector's award to be in, 14.
Collector's statement on reference to Court to be in, 22.
award of Court to be in, 47.
notice under s. 35 to be in, 63.
agreement under s. 35 to be in, 63.
owner to withdraw his desire under s. 49 in, 70.
notice of intention to work mines to be in, 85.

ZEMINDAR,
when entitled to share in compensation, 50—55.

August 1898.

THACKER, SPINK & CO.'S
LAW PUBLICATIONS.

Second Edition. Just Published. 8vo, *cloth.* *Rs.* 7-8.

THE

LAW RELATING TO NEGOTIABLE INSTRUMENTS IN BRITISH INDIA.

BEING THE

SECOND EDITION

OF

CHALMERS' NEGOTIABLE INSTRUMENTS ACT.

BY ARTHUR CASPERSZ,

Barrister-at-Law, Advocate of the High Court, Calcutta.

PRESS NOTICES OF THE FIRST EDITION.

"From a perusal of the Introduction and of the notes given to each section a clear idea of the scope and meaning of the Act is obtained, and what in the bare text was very involved becomes intelligible. Mr. Chalmers' book will therefore be most useful to all those who either deal in Negotiable Instruments in the course of their business, or who have to give legal opinions on, or conduct cases arising out of, the rights and liabilities founded on such instruments."—*Pioneer.*

"But it is when we come to the strictly critical portions of the Commentary that we find it of great use and sterling value to the practitioner for every-day reference."—*Times of India.*

Second Edition. Now Ready. Demy 8vo, *cloth. Rs.* 12.

THE

LAW OF SPECIFIC RELIEF IN INDIA:

BEING A COMMENTARY ON ACT I OF 1877.

BY CHARLES COLLETT,

LATE OF THE MADRAS CIVIL SERVICE; OF LINCOLN'S INN, BARRISTER-AT-LAW, AND FORMERLY A JUDGE OF THE HIGH COURT, MADRAS.

Second Edition.

BY H. N. MORISON,

THE MIDDLE TEMPLE, BARRISTER-AT-LAW; AUTHOR OF "ADVOCACY AND MINATION OF WITNESSES."

Now Ready. Demy 8vo, pp. cxxxix 1092. *Cloth, gilt. Rs.* 18.

THE LAW OF EVIDENCE

APPLICABLE TO BRITISH INDIA.

By Hon'ble Justice AMEER ALI, M.A., C.I.E.,

Barrister-at-Law, Judge of the High Court of Judicature at Fort William in Bengal,

AND

J. G. WOODROFFE, M.A., B.C.L.,

Barrister-at-Law, Advocate of the High Court at Calcutta.

[*SCHEME—(1) Introduction to Part of Act (2) Introduction to Chapter of Act* (a) *Section of Act;* (b) *Principle upon which it is enacted;* (c) *Group of Cognate Sections;* (d) *References to Text-books dealing with the subject-matter of the Section;* (e) *Commentary on the words of the Section.*]

Contents :—Table of Acts, Regulations, and Statutes Cited — Table of Cases Cited — Bibliography of Works upon the Law of Evidence — General Introduction—The Indian Evidence Act with commentary—pp. 1—915 Schedule—Appendix—(A) Table of Places to which the Act has been specifically or generally applied : of Native States which have adopted the Act ; and of places beyond British India to which the Act has been made applicable—(B) Note on the interpretation of Statutes — (C) Act II of 1855 (Evidence) — (D) Fifth Report of Her Majesty's Law Commissioners (1868) — (E) Abstract of Proceedings of the Legislative Council (1868—72)— General Index.

In the preparation of this commentary upon the Indian Evidence Act (I of 1872), the authors have availed themselves, not only of the latest editions of English and American text-books treating generally of the Law of Evidence, but also of some of those special treatises which deal in detail with its particular branches, such as the theory of Relevancy ; circumstantial, opinion, and presumptive evidence ; the law relating to confessions, experts, estoppel, identification, disputed handwriting, *res judicata*, privileged communications, burden of proof, extrinsic evidence affecting documents, the right to begin and reply, the examination of witnesses, communication by telegraph and telephone, and the like. With respect to the Indian case-law especial endeavour has been made not only to *collect* all relevant decisions from the days of the earliest Indian Reports down to and including the month of December 1897, but also to afford that *classification* and critical *analysis* of those decisions, without which a text-book is likely to prove to be hardly more than a repository for the names of cases or the Reporter's head notes, and as such but of little service to the practising lawyer for whom this work has been, in large part, designed.

Super-royal 8vo, cloth, gilt.

A DIGEST OF INDIAN LAW CASES;

CONTAINING

HIGH COURT REPORTS AND PRIVY COUNCIL REPORTS OF APPEALS FROM INDIA, 1890-93,

WITH AN INDEX OF CASES.

COMPILED BY

JOSEPH VERE WOODMAN,

Of the Middle Temple, Barrister-at-Law, and Advocate of the High Court, Calcutta.

Vol. VI.	1887—1889	...	... Rs. 12	0
Vol. VII.	1890—1893	...	... „ 16	0
Vol. VIII.	1894—1897	...	... „ 16	0

Fourth Edition. In Royal 8vo, cloth. Rs. 10.

THE

INDIAN LIMITATION ACT,

ACT XV OF 1877

(*as amended by Act XVII of* 1877, *XII of* 1879, *V of* 1881, *IX of* 1887, *VII of* 1888, *XII of* 1891, *and VI of* 1892.)

WITH NOTES.

BY

H. T. RIVAZ,

Of the Inner Temple, Barrister-at-Law, and one of the Judges of the Chief Court, Punjab.

TAGORE LAW LECTURES, 1894.

In Royal 8vo, cloth. Rs. 10.

THE LAW OF

FRAUD, MISREPRESENTATION & MISTAKE

IN BRITISH INDIA.

BY SIR FREDERICK POLLOCK, BART.,

Barrister-at-Law, Professor of Jurisprudence, Oxford.

Second Edition. Royal 8vo, cloth. Rs. 16.

MAHOMEDAN LAW. Vol. I.

THE LAW RELATING TO

GIFTS, WAKFS, WILLS, PRE-EMPTION AND BAILMENT,

ACCORDING TO

THE HANAFI, MALIKI, SHAFIC, AND SHIAH SCHOOLS.

COMPILED FROM

Authorities in the Original Arabic, with Explanatory Notes and References to Decided Cases, and an Introduction on Mahomedan Jurisprudence and Works on Law.

BY THE HON'BLE JUSTICE AMEER ALI, M.A., C.I.E.,

Barrister-at-Law, Author of "The Personal Law of the Mahomedans."

Importance of Mahomedan Law.
The Law relating to Gifts.
Formalities relative to Gifts.
The Revocation of Gifts.
Consideration on *Ewaz*.
The Shiah Law relating to Gifts.
The Law of Gifts according to the Shafic Doctrines.
The Law of *Wakf*.
The *Moukoof Alaihim* or the Objects of *Wakf*.
The Matwalli.
The Powers of the Wakif.
Wakf in favour of non-existing Objects.
The Principles of Construction.
The Shiah Law relating to *Wakf*.
The Maliki Law relating to *Wakf*.
The Law of *Wakf* according to Shafic School.
The Law relating to Wills.

"The authorities relating to gifts of Mushaa have been collected and commented upon with great ability by Syed Ameer Ali in his Tagore Lectures of 1884."—*Privy Council, Indian Appeals*, Vol. XVI.

Royal 8vo, cloth. Rs. 14.

MAHOMEDAN LAW. Vol. II.

A Second Edition of

THE PERSONAL LAW OF THE MAHOMEDANS.

The Law relating to Succession and Status, according to the Hanafî, Mâlikî, Shâfei, Shiah and Mutazala Schools. Compiled from Authorities in the original Arabic, with Explanatory Notes and References to Decided Cases, and an Introduction on the Islâmic system of Law.

BY THE HON'BLE JUSTICE AMEER ALI, M.A.,

Barrister-at-Law, one of the Judges of H. M.'s High Court of Judicature, Bengal.

Second Edition, Revised and Enlarged. Royal 8vo, cloth. Rs. 16.

THE

LAW RELATING TO MINORS

AS ADMINISTERED IN THE PROVINCES SUBJECT TO THE HIGH COURTS OF WARDS IN BENGAL, MADRAS, AND THE NORTH-WESTERN PROVINCES.

BY ERNEST JOHN TREVELYAN, ESQ.,

Barrister-at-Law.

CONTENTS.

I.—Age of Majority and Domicile.
II. Contracts and Disposal of Property.
III.—Acquisition of Property by Transfer, Gift, Inheritance, or Will.
IV.—Offices of Public and Private Trust.
V.—Testimony of Minors.
VI.—Wrongs and Criminal Offences by Minors.
VII.—Wrongs and Criminal Offences against Minors.
VIII.—Natural Right of Guardianship.
IX.—Appointment of Testamentary Guardians.
X.—Loss of Right of Guardianship.
XI.—Appointment of Guardians by Civil Courts.
XII.—Removal and Discharge of Guardians by Civil Court.
XIII.—References, Appeals, Costs, &c., in Proceedings under Guardian and Wards Act.
XIV.—Appointment and Removal of Guardians by High Courts.
XV.—Duties of Guardians.
XVI.—Rights and Powers of Guardian of Person.
XVII & XVIII.—Rights and Powers of Guardian of Property.
XIX.—Liabilities of Guardians.
XX.—Modes of enforcing Rights to Custody of Property and Person of Minor.
XXI.—Ratification and Avoidance.
XXII.—Maintenance, Advancement, and Education.
XXIII.—Marriage of Minors.
XXIV.—Powers of Courts over Property of Minors.
XXV.—Suits and Proceedings by and against Minors.
XXVI.—Costs of Suits by and against Minors.
XXVII.—Decrees in Suits by and against Minors.
XXVIII.—Limitation of Suits by and against Minors.
XXIX.—Proof of Minority when in Issue.
XXX.—Courts of Wards.
XXXI.—The Court of Wards in Bengal, Constitution and Powers.
XXXII.—Bengal Court of Wards, Managers and Guardians.
XXXIII.—Bengal Court of Wards, Miscellaneous.
XXXIV.—Court of Wards, North-Western Provinces.
XXXV.—Court of Wards, Madras.
XXXVI.—Suits by and against Wards of Courts of Wards.

Second Edition. Royal Octavo. Cloth. Rs. 12.

ESTOPPEL

BY

REPRESENTATION AND RES JUDICATA

IN

BRITISH INDIA.

BY ARTHUR CASPERSZ, ESQ., B.A., *Barrister-at-Law.*

CONTENTS:—INTRODUCTION—LEADING PRINCIPLES.

PART I—MODERN OR EQUITABLE ESTOPPEL.

CHAPTER 1—Estoppel by Representation. CHAPTER 2—Benami Transactions. CHAPTER 3—Landlord and Tenant. CHAPTER 4—Patents CHAPTER 5—Bailor and Bailee. CHAPTER 6—Vendor and Purchaser. CHAPTER 7—Agency and Partnership. CHAPTER 8—Negotiable Instruments. CHAPTER 9—Companies. CHAPTER 10—Matter in Writing. CHAPTER 11—Admissions.

PART II.—ESTOPPEL BY JUDGMENT

CHAPTER 1—Res Judicata. CHAPTER 2—Forum. CHAPTER 3—Parties and Representatives. CHAPTER 4—Matters in Issue. CHAPTER 5—Matters constructively in Issue. CHAPTER 6—Final Decision. CHAPTER 7—Judgments in Rem. CHAPTER 8—Foreign Judgments.

(PRESS NOTICES OF THIS EDITION.)

"The present edition has been duly brought up to date, and our opinion as to the general merit and utility of the book is confirmed by further examination."—*Law Quarterly Review.*

"Mr Caspersz has laid the legal profession under an obligation by the publication of a new edition of his excellent book on Estoppel . . . . . The work is a monument of industry and affords a striking example of what may be accomplished by a busy man."—*Indian Daily News.*

"The most authoritative Indian treatise upon the subject with which it deals. Mr. Caspersz's name is a guarantee for accurate and conscientious work, and his book may be accepted among the classics of an Indian law library "—*Statesman.*

(PRESS NOTICES OF THE FIRST EDITION)

"The treatise ranges over the entire subject, including those portions of the Law of Estoppel not yet dealt with in the codified Chapters of the Indian Law. A great body of decisions had grown up in India prior to the so-called Codes, and the stream of cases still flows on It must therefore be an advantage to the Indian Law student and practitioner to meet with a treatise presenting the English and Indian cases set out with great fulness and accuracy and discussed with care . .

"The work appears to have been executed with great care and ability, and it is, we think, likely to commend itself to students and to the profession generally both in England and in India "—*Law Quarterly Review*

"The best and most recent exposition of a branch of law which of late years has very considerably expanded "—*English Law Times*

"The author has dealt with the subject exhaustively and accurately, and we predict that this book will speedily become a text-book in British India in the hands of every legal practitioner in the country."—*Indian Jurist.*

"A work shewing great research, and one in which the materials amassed have been arranged and presented to the reader with great care and skill "—*Times of India*

"We have hope that it may prove as successful and worthy of success as the best of its predecessors."—*Madras Mail.*

Second Edition. Just Published. Royal 8vo, cloth. Rs. 16.

TESTAMENTARY SUCCESSION

AND

ADMINISTRATION OF INTESTATE ESTATES IN INDIA,

BEING A COMMENTARY ON THE

Indian Succession Act (X of 1865), The Hindu Wills Act (XXI of 1870), The Probate and Administration Act (V of 1881), &c., &c.

BY

GILBERT S. HENDERSON, M.A.

WITH

Notes and Cross References, and a General Index.

PRESS NOTICE.

"This edition supplies a distinct need and will be welcomed by the legal profession ..... Perhaps the most significant testimony to its value and to the esteem in which it is held in the Law Courts is the fact that no rival had seriously disputed this field with Mr. Henderson, whose name is a guarantee for sound work and learning."—*Statesman.*

TAGORE LAW LECTURES, 1887.

Royal 8vo, cloth. Rs. 16.

THE LAW OF

TESTAMENTARY DEVISE

AS ADMINISTERED IN INDIA; OR, THE LAW RELATING TO

WILLS IN INDIA.

With an Appendix containing—The Indian Succession Act (X of 1865), The Hindu Wills Act (XXI of 1870), The Probate and Administration Act (V of 1881), with all Amendments, The Probate and Administration Act (VI of 1889), and The Certificate Succession Act (VII of 1889).

BY G. S. HENDERSON, ESQ., M.A.,

Barrister-at-Law.

Just Ready. Royal 8vo., pp. xxx 1092. *Rs* 14.

With Addenda including Act IV of 1898.

THE

INDIAN PENAL CODE,

To which is appended the **Acts** of the Governor-General in Council **relating to Criminal Offences in India.**

WITH A COMPLETE COMMENTARY.

BY W. F. AGNEW,

Barrister-at-Law, Recorder of Rangoon.

In Crown 8vo, cloth. Rs. 7.

THE CASE-NOTED PENAL CODE.

BY CHARLTON SWINHOE,

Barrister-at-Law.

The aim of this work is to give under each section the references to the cases decided under it; with, in many cases, a résumé of the arguments and decisions.

"Admirably adapted for use in Court work and especially in the Mofussil . . his book should commend itself to lawyers engaged in criminal practice. It should also prove useful to Magistrates who may have occasion to consider whether authorities cited before them are conclusive or not, for it will give them all the cases decided upon any particular point under consideration."—*Times of India.*

"We are glad to say that, so far as we are able to judge, he has performed his task with much success. The book is printed in a convenient size, and the Case Law appears to have been carefully consulted."—*Civil and Military Gazette.*

Third Edition, with Additions to 1896 *Crown 8vo.*

Cloth, Re. 1-8; Paper, Re 1.

A CHAUKIDARI MANUAL:

BEING

ACT VI, B.C., OF 1870,

AS AMENDED BY

ACTS I, B.C., OF 1871, 1886, & 1892,

Sec. 45, Code of Criminal Procedure, and S. 21, Regulation XX of 1817

WITH

NOTES, RULES, GOVERNMENT ORDERS, AND INSPECTION NOTES.

BY G. TOYNBEE, ESQ.,

Magistrate of Hooghly.

ANGLO-MUHAMMADAN LAW.

Demy 8vo, cloth, pp. 151. *Rs.* 6.

AN INTRODUCTION TO THE STUDY

OF

ANGLO-MUHAMMADAN LAW.

BY SIR ROLAND KNYVET WILSON, BART.,

Late Reader in Indian Law to the University of Cambridge.

"This little work aims at lightening the task of the student who is entering upon a study of this difficult and complex subject Commencing with a sketch of Mahomet as a legislator, and the Koran as a law book, it proceeds to trace the development of Muhammadan Law, both orthodox and otherwise, and its growth in India under Muhammadan rulers The last two chapters are taken up with the history and present footing of Anglo Muhammadan Law, and an outline thereof The author s long experience, when he was reader of Indian Law at Cambridge, has enabled him to meet the wants of the student. —*Law Times*

"We think that the author has acted wisely by distinguishing by the prefix 'Anglo,' hat small fragment of the Muhammadan Law which the English Government en forces by its own tribunals Very thoroughly has the author dealt with this fragment, and to those who desire to make some acquaintance with this branch of Indian Jurisprudence, we recommend the above book with every confidence '—*Law Magazine and Review*

"The book is well and carefully written, showing a good grasp of facts and theories and a wide and judicious reading of authorities on the subject,—as might well have been expected from the late accomplished Reader of Indian Law in Cambridge University —*Asiatic Quarterly Review*

Demy 8vo, cloth, pp. 495. *Rs.* 15.

A DIGEST OF

ANGLO-MUHAMMADAN LAW.

BY SIR ROLAND KNYVET WILSON, BART.,

Late Reader in Indian Law to the University of Cambridge.

Setting forth in the form of a Code, with full references to modern and ancient authorities, the special Rules now applicable to Muhammadans as such by the Civil Court of British India.

"Sir Roland has admirably performed his difficult task His Digest sets forth for the first time in a complete manner the laws now applicable to Mahomedans as such by the Indian Courts, together with full references to ancient and modern authorities, and to the ruling decisions of the Judges as a work of technical codification it also takes a high place It is by no means the first service of the kind which Sir Roland Wilson has rendered to India, but even if it stood alone he would have achieved a work not unworthy of his own reputation or of the great University in which he so long and so ably represented Indian Law —*Times*

"The volume is an interesting one even for the general reader, while the lawyer should be able to get up Anglo Muhammadan Law from the 'Digest' with the least possible trouble '—*Madras Times*

"This work will be a welcome addition to the somewhat scanty stock of modern English writing upon this branch of Indian Law ..Finally, no pains have been spared to make the rules and decisions visible at a glance The Index is copious, and the whole work well and clearly printed —*Times of India*

"Sir Roland Wilson grapples with a complicated task in what seems to us a most admirable and efficient manner His statements of the law and of precedents are wholly lucid and intelligible, and this Digest should form an invaluable work of reference for all who are called upon to deal in any way with the Muhammadan Law of British India —*Home News*

Royal 8vo, cloth. Rs. 16.

THE INDIAN PENAL CODE:

WITH A COMMENTARY.

By W. R. HAMILTON,

Barrister-at-Law, Presidency Magistrate, Bombay.

PRESS NOTICES.

"A valuable work."—*Bombay Gazette.*

"The book will repay study by English readers—as showing the simplicity and feasibility of the Code."—*Law Journal.*

"It is one more valuable contribution to the slowly increasing series of standard commentaries on statute law by authors who have had practical experience in the administration of the law in India."—*Times of India.*

"Of the book itself we have a high opinion. It contains, in fact, practically everything of importance that can guide to a knowledge or administration of the Penal Code; while notes on procedure appended to each section that defines an offence, stating briefly whether the offence be cognizable, bailable, compoundable, and so on, enable the reader to gain at a glance all the information he requires."—*Statesman.*

Just Published. Fourth Edition. Royal 8vo. Rs. 16.

THE CODE OF CRIMINAL PROCEDURE

ACT V OF 1898,

Together with Rulings, Circular Orders, Notifications, etc., of all the High Courts in India; and Notifications and Orders of the Government of India and the Local Governments.

EDITED WITH COPIOUS NOTES AND FULL INDEX.

Fourth Edition.

By GILBERT S. HENDERSON, M.A.,

Barrister-at-Law, Offg. Judge of the High Court, Calcutta; Tagore Lecturer, 1887, *and Author of a Treatise on "Testamentary Succession in India."*

NOTICES OF THE PRESS.

"The Fourth Edition of Mr. Justice Henderson's Criminal Procedure Code has been published. It will be welcomed by the legal profession, for of all the works on this subject it is far and away the most practical."—*Indian Daily News,* 1*st June* 1898.

"A full and exhaustive commentary on the Code ... . Mr. Henderson .. . has rendered a service to the profession as also to those whose duty it will be to administer the Law and to regulate the Procedure according to the New Code."—*Weekly Notes,* 30*th May* 1898.

"A most useful book and quite up to date. Long experience has proved Mr. Henderson's book to be a thoroughly reliable and practical work. .... Wherever a section has been altered or a new section added, special attention has been drawn to it at the beginning of the note to the section, so that Judges and Magistrates and Members of the profession will be able to see at a glance how the Law has been altered."—*Englishman,* 11*th June* 1898.

In the Press. Third Edition, Re-written and Enlarged.

THE

LAW OF MORTGAGE IN INDIA.

With an Appendix. The Transfer of Property Act annotated.

BY RASH BEHARI GHOSE, M.A., D.L.

Tagore Lecturer, 1875.

Royal 8vo, cloth. Rs. 12.

THE

LAW AND PRACTICE

OF

REGISTRATION IN BENGAL.

COMPRISING

A short History of the Legislation on this Branch of the Law from the year 1793 to the present time, with Acts XVI of 1864, XX of 1866 and VIII of 1871: also Act III of 1877 as amended up to date, with Notes, Annotations and Judicial Decisions.

The Sections of the Tenancy Act, which affect Registration, with Notes, and the latest Revised Rules of the Bengal Government.

The General Stamp Act with a Digest of Rulings and latest Rules and Notifications of Government.

A Manual of Rules which have the force of Law and of all Circular Orders of the Department, Annotated with Appendices and Specimen Forms, and

A List of Districts and Sub-Districts corrected up to April 30, 1895.

BY H. HOLMWOOD, I.C.S.,

District and Sessions Judge, Gaya, Late Inspector-General of Registration, Bengal.

PRESS NOTICES.

"This excellent handbook of digested information on the Law and Practice of Registration in Bengal . . . . . Between its covers the reader will find, printed in clear type and admirably arranged, all the Stamp Law, Procedure Rules, and Judicial Decisions necessary to the due registration of title deeds and securities . . . . . It fills a void and has a distinct value of its own . Few large offices, we venture to think, can afford to be without a copy of this careful and unpretentious work"—*Statesman.*

"Mr Holmwood must be congratulated on his contribution to our Indian Law Manuals He has certainly succeeded in producing a handy volume of the Law upon the subject, which we can recommend with all confidence to those whose duties or whose avocations bring them in contact with the Registration Act."—*Englishman.*

TAGORE LAW LECTURES, 1878.

Second Edition, Revised. Royal 8vo. Rs. 10.

THE HINDU LAW OF

MARRIAGE AND STRIDHANA.

BY THE HON'BLE GURUDASS BANERJEE, M.A., D.L.,

Judge, High Court, Calcutta.

CONTENTS.

I.—Introductory Remarks.
II.—Parties to Marriage.
III—Forms of Marriage and Formalities requisite for a valid Marriage.
IV.—Legal consequences of Marriage.
V.—Dissolution of Marriage—Widowhood.
VI.—Certain Customary and Statutory Forms of Marriage.
VII.—What constitutes Stridhana.
VIII.—Rights of a Woman over her Stridhana.
IX.—Succession to Stridhana, according to the Benares School.
X.—Succession to Stridhana, according to the Maharashtra Dravida, and Mithila Schools.
XI.—Succession to Stridhana, according to the Bengal School.
XII.—Succession to Woman's Property other than her Stridhana.

TAGORE LAW LECTURES, 1880.

Royal 8vo, cloth. Rs. 16.

THE PRINCIPLES OF THE

HINDU LAW OF INHERITANCE,

TOGETHER WITH

I.—A Description, and an Inquiry into the Origin of the SRADDHA Ceremonies:
II.—An Account of the Historical Development of the Law of Succession, from the Vedic Period to the present time:
III.—A Digest of the Text-Law and Case-Law, bearing on the Subject of Inheritance.

BY RAJKUMAR SARVADHIKARI, B.L.,

Law Lecturer and Professor of Sanskrit, Canning College, Lucknow.

TAGORE LAW LECTURES, 1879.

Royal 8vo, cloth. Rs. 10.

THE LAW RELATING TO

THE HINDU WIDOW.

BY BABOO TRAILOKYANATH MITRA, M.A., D.L.,

Law Lecturer, Presidency College.

I.—The Sources of Hindu Law.
II.—The Condition of Women and the Obligation of Widows.
III.—The Widow's Rights of Succession.
IV.—The Obligations of the Widow as Heir.
V.—The Re-marriage of Widows.
VI.—The Nature and Extent of the Widow's Estate.
VII.—The Nature and Extent of the Widow's Estate (continued).
VIII.—The Alienations by the Widow.
IX.—The Alienations by the Widow (continued).
X.—The Rights of the Reversioners.
XI.—Suits by Reversioners.
XII.—The Maintenance of the Widow.

Crown 8vo, cloth. Rs. 6.

ADVOCACY & EXAMINATION OF WITNESSES,

Including the Duties and Liabilities of Pleaders in India.

BY H. N. MORISON, ESQ.,

Barrister-at-Law and Advocate of the High Court, Calcutta.

The work treats of matters of practice such as taking instructions, speech, argument, examination-in-chief and cross-examination, and includes a résumé of the duties and liabilities of Pleaders in India. The Legal Practitioners' Act, with the Rules of the High Courts relating to the admission of Pleaders and Mukhtears, appears in the form of an Appendix.

"Undoubtedly juniors and, possibly, not a few seniors too, may profit by the sensible and practical hints Mr. Morison gives as to the *finesse* of Counsel and the treatment of Witnesses . . . . . Mr. Morison's book is certainly one that should be bought."—*Statesman.*

"A work which will be of material service to the younger members of the legal profession in India."—*Indian Daily News.*

"A book which should be put into the hands of every young pleader before starting practice. It deals in a popular manner with the whole of an Advocate's duty from the moment of presenting himself to the ordeal of the examination until he reaches the topmost rung of the ladder . . . . . The book contains many hints that will be of value to all practitioners."—*Bombay Gazette.*

"We can safely predict of Mr. Morison's book that no one who buys it will regret the small sum expended on its purchase."—*Civil and Military Gazette.*

"The chapter on 'Witnesses' is extremely good."—*Pioneer.*

"A very useful little book . . . The book is something more than a guide to the Bar and contains useful hints on Advocacy and the Examination of Witnesses."—*Ceylon Observer.*

"An interesting and valuable addition to the literature of the profession. The subject is treated in a broad and comprehensive manner which makes the book attractive to the general reader, while at the same time the author brings judgment and experience to bear upon the every-day details of an Advocate's life, and with admirable results . . . . . enough has been said to indicate the highly practical and valuable character of the work, which may safely be commended to the attention alike of the lay public and of all Indian Lawyers."—*Englishman.*

Fourth Edition, Revised. Demy 8vo, cloth. Rs. 5.

THE

INDIAN LAW EXAMINATION MANUAL.

BY FENDALL CURRIE, ESQ.,

Of Lincoln's Inn, Barrister-at-Law.

CONTENTS.

Introduction—Hindoo Law—Mahomedan Law—Indian Penal Code—Code of Criminal Procedure—Code of Civil Procedure—The Specific Relief Act—Evidence Act—Limitation Act—Succession Act—Contract Act—Registration Act—Stamp and Court Fees' Acts—Mortgage—The Easement Act—The Trust Act—The Transfer of Property Act—The Negotiable Instruments Act.

OPINIONS OF THE PRESS.

"The experience of the compiler in the learned profession with which he is connected, speaks for the usefulness and importance of the questions that have been put in with a view to prepare candidates for the examination."—*Indian Mirror.*

"It is excellently arranged."—*Englishman.*

In Demy 8vo, cloth. Rs. 10.

THE N.-W. PROVINCES RENT ACT;

Being Act XII of 1881,

As amended by subsequent Acts.

With Introduction, Commentary and Appendices.

BY H. F. HOUSE, C.S.

"He has produced a tolerably complete handbook of the law relating to agricultural and like tenancies in the North-Western Provinces. But he has done more. In his excellent Introduction he has given a very interesting historical retrospect of the Rent Law. The notes under the several sections of the Act appear also to embody all the important rulings and to have been put together with great care. On the whole, the handbook is one we can thoroughly recommend to all those who are interested in the branch of law with which it deals."—*Civil and Military Gazette.*

Demy 8vo, cloth. Rs. 7.

THE

NORTH-WESTERN PROVINCES RENT ACT:

BEING

ACT XII OF 1881, AS AMENDED BY ACT XIV OF 1886.

WITH NOTES, &c.

BY H. W. REYNOLDS, C.S.

Demy 8vo, cloth. Rs. 8.

THE NORTH-WESTERN PROVINCES LAND REVENUE ACT:

Being Act XIX of 1873, *as amended by Acts I and VIII of* 1879, *XII of* 1881, *XIII and XIV of* 1882, *XX of* 1890, *and XII of* 1891.

WITH NOTES, GOVERNMENT ORDERS, BOARD CIRCULARS AND DECISIONS, AND RULINGS OF THE ALLAHABAD HIGH COURT.

BY AZIZUDDIN AHMED,

Deputy Collector and Magistrate, N.-W. Provinces and Oudh.

Third Edition, Revised, Re-written, and much Enlarged.

THE

LAW OF RENT AND REVENUE OF BENGAL:

Being the Bengal Tenancy Act, Putni Laws and other Revenue Acts, with Notes, Annotations, Judicial Rulings and Rules of the Local Government, High Court, and the Board of Revenue.

BY BABOO KEDAR NATH ROY.

Crown 8vo, cloth, gilt. Rs. 12.

HAND-BOOK OF INDIAN LAW,

A Popular and Concise Statement of the Law

WITH FULL INDEX.

By a Barrister-at-Law and Advocate of the High Court, Calcutta.

PRESS NOTICES.

"This handbook is intended primarily to present to the non-legal public and to students an abridgment of the law, criminal and civil, generally in force throughout British India. It is concise, popularly written, and so far as we have been able to form an opinion on the point, complete. Lawyers as well as students may find it serviceable at a pinch. A short and excellent historical account of legislation and Courts of Law in British India from the time of the East India Company until the present day is embodied in an Introduction. The Index is admirable. This book will be of great use to competition-wallahs."—*Law Journal, December 22nd*, 1894.

"..... should command a very ready sale. The object of the author, we are told, has been to present, in as concise and popular form as the nature of the subject admits, an abridgment of the law, criminal and civil, generally in force throughout British India. .... One admirable feature of the book is the general arrangement for reference, which makes the discovery of any required subject both simple and easy. The work of condensing has been well done, and no important point appears to have been omitted; while at the foot of each page the latest and best authorities on each point are quoted."—*Englishman.*

'Will be useful to both these classes (non-legal public and students). . . The book will be useful to the legal public as well as to the classes for whose benefit it is primarily intended, for to lawyers it will serve the purpose of a convenient index or legal lexicon."—*Indian Daily News.*

"Intended primarily for the use of laymen and students, this book will, we doubt not, very soon become as recognised an authority here as 'Every Man his own Lawyer' is at home ..... he (the Editor) has well succeeded in the object he has had in view—the presentment in a concise and popular form of an abridgment of the Criminal and Civil Law generally in force throughout British India. ..... The book is so thoroughly 'up to date' that the Land Acquisition Act passed last March is summarised therein. The Editor has admirably succeeded in his endeavour to give a lucid and accurate compendium of the laws under which we live. The exhaustive index at the end of the book and the bold type used at the commencement of paragraphs and for words of particular importance will materially facilitate reference .... So handy a compendium of Indian judiciary should have a very large sale."—*Bombay Gazette.*

"Will satisfy a prevailing want and ought to meet with a ready sale . . .. carefully condensed work .... the work will, we may safely say, be able to point out to the uninitiated what, if he has a grievance, is the proper course he ought to pursue; and how, if he wishes to repair a wrong or redress an injury, he must set about it, and what is his remedy and the best course to pursue. The work would seem to be exhaustive, compendious, and, unlike the general run of legal productions, of small bulk, condensed and convenient to handle, and possesses a large and copious index of 92 double columns of fairly small print; without it a work of such a kind might run the risk of becoming a trackless waste; but with it, it is at once handy and easily understood of the people ..... is enterprising in character, and we trust it will meet with the success which it deserves, and may every purchaser of a copy remember that '*Ignorantia juris haud excusat.*'"—*Pioneer.*

HANDBOOKS FOR GOVERNMENT EXAMINATIONS.

Third Edition, Revised. Crown 8vo, cloth. Rs. 3.

THE STUDENT'S HANDBOOK OF

MAHOMEDAN LAW.

BY THE HON'BLE JUSTICE AMEER ALI, C.I.E.,

Author of "Mahomedan Law:" "The Spirit of Islam:" The Ethics of Islam," &c., &c.

Demy 8vo, cloth, pp. 517. Rs. 6.

A SHORT TREATISE

ON

HINDU LAW.

AS ADMINISTERED IN THE COURTS OF BRITISH INDIA.

BY HERBERT COWELL,

Middle Temple, Barrister-at-Law,

Author of "The History and Constitution of the Courts and Legislative Authorities in India."

"We can say of this Book that it appears to be clearly and readably written, and to cover in outline a very wide extent of subject-matter."—*Law Journal.*

"Will be found to contain a well digested mass of information."—*Imperial and Asiatic Quarterly.*

"Puts the outlines of Hindu Law briefly and clearly before the student."—*Madras Times.*

Crown 8vo, cloth, Rs. 3; Post-free, Rs. 3-3.

INTRODUCTION

TO THE

REGULATIONS OF THE BENGAL CODE.

BY C. D. FIELD, M.A., LL.D.

CONTENTS.

CHAPTER I.—The Acquisition of Territorial Sovereignty by the English in the Presidency of Bengal.
" II.—The Tenure of Land in the Bengal Presidency.
" III.—The Administration of Land-revenue.
" IV.—The Administration of Justice.

A Reprint in Crown 8vo, cloth. Rs. 3.

THE

PRINCIPLES OF JUDICIAL EVIDENCE;

An Introduction to the Indian Evidence Act, 1872.

BY SIR JAMES FITZ-JAMES STEPHEN.

Fifth Edition. Thick 8vo, cloth. Rs. 18.

THE

LAW OF EVIDENCE IN BRITISH INDIA.

By C. D. FIELD, M.A., LL.D.,

Bengal Civil Service,

Recently a Judge of the High Court of Judicature, Calcutta.

This work contains the Indian Evidence Act (as amended up to 1st January 1894), the Bankers' Evidence Act, XVIII of 1891 (as amended by Act I of 1893), and all provisions on the subject of Evidence which are in force and unrepealed by the Evidence Act or any other Act.

OPINIONS OF THE PRESS ON THIS EDITION.

"One of the standard reference books of India is Field's Law of Evidence ..... We may say of the present volume, as was said of its predecessor, that it is rather a new book than a new edition. To the Editor the revision has been, if not exactly a labour of love, at least a corollary of his own private study of the latest changes of the law. An important and most useful feature of this edition is a complete list of the Native States or 'places therein' to which the Evidence Act has been applied by the Governor-General. No such list, we believe, has been compiled or published before. The entire work, we may say, bears the unmistakable traces of careful and critical revision. Every change that has been introduced is a very decided improvement."—*Englishman.*

"The work has been brought up to date with a painstaking thoroughness which will be obvious to all who compare it with the fourth edition, and will be generally welcomed by judicial officers and the legal profession throughout India as the most complete and authoritative exposition obtainable of the subject with which it deals."—*Indian Daily News.*

"Mr. Field's name is a sufficient guarantee for the completeness and accuracy of any legal work he undertakes, and his present venture will no doubt meet with due appreciation in the profession."—*Statesman.*

"Mr. Field's 'Law of Evidence in British India' has long been recognised as the leading authority on the subject. His book is to the Indian practitioner what Taylor's work is to the English lawyer, and no law library can be deemed complete without it . . . . In concluding this brief notice of his excellent treatise, which, as we have said above, contains a masterly exposition of the Law of Evidence applicable to this country, an historical retrospect of the course of legislation on that subject, and valuable hints on estimating the value of Indian evidence, we can best sum up our opinion of it in the words of the talented author of *Leading Cases done into English* :—

"'All this and more
Is printed in a wise and weighty book,
With gloss and commentary, case on case,
Rich soil for fresh debate and argument
To swell the garden of choice instances,
And bless posterity with new delicacies
Of hair breadth's difference.'"

—*Civil and Military Gazette.*

Second Edition. Thick Demy 8vo. Rs. 16.

A COMMENTARY ON HINDU LAW

OF

INHERITANCE, SUCCESSION, PARTITION, ADOPTION, MARRIAGE, STRIDHAN, ENDOWMENTS AND TESTAMENTARY DISPOSITION.

BY

PUNDIT JOGENDRO NATH BHATTACHARJI, M.A., D.L.

"No Student or Practitioner should be without a copy of this great work."—*Nanabhai Haridas.*

"Babu Bhattacharji is the greatest name in the recent history of the University. He has already made his mark, having written a really original work on Hindu Law, which must assert itself against the crude compilations and false views of European writers."—*Reis and Rayyat, Decr. 26th,* 1885.

"The result of his labours is an accurate, well-arranged, comprehensive, and convenient manual of Hindu Law eminently fitted to be a text-book for students, and a guide to practitioners in all cases where questions of principle are involved. Upon several important topics the book is rich in original information and observations; and we may notice particularly the Rules of Interpretations, the Legal Maxims, and the Theory of Spiritual Benefits, as remarkable for originality. . . . . The most valuable feature of the book is, that it gives us an insight into the real nature of Hindu Law, the manner in which its rules are expressed, and in which its principles must be discovered, and the methods by which its problems must be solved."—*Indian Nation.*

Second Edition, Revised, with Additions. Crown 8vo, cloth. Rs. 4-8.

AL SIRAJIYYAH :

OR THE

MAHOMEDAN LAW OF INHERITANCE,

WITH NOTES AND APPENDIX.

BY ALMARIC RUMSEY, *Barrister-at-Law,*

Professor of Indian Jurisprudence at King's College, London, Author of "The Mahomedan Law of Inheritance," etc

Three Volumes. Imperial 8vo, cloth. Rs. 36.

DIGEST OF INDIAN LAW REPORTS,

A COMPENDIUM OF THE RULINGS OF THE HIGH COURT OF CALCUTTA AND OF THE PRIVY COUNCIL, 1831 TO JUNE 1896.

BY D. SUTHERLAND, ESQ.

Barrister-at-Law, Middle Temple.

Vol. I, 1831 to 1876, Rs. 8. Vol. II, 1876 to 1890, Rs. 12.
Vol. III, 1891-96, Rs. 16.

The only Digest which shows on the face of each ruling where it has been followed, approved, over-ruled, dissented from, explained, or referred to; and affords facilities, by means of cross-references, to speedily getting at a particular case.

PRIVY COUNCIL JUDGMENTS.

From 1831 to 1880.

JUDGMENTS OF THE PRIVY COUNCIL ON APPEALS FROM INDIA.

BY D. SUTHERLAND, ESQ.

The set of 3 vols. half-calf, Rs. 27-8.

Fourth Edition. Now Ready. Royal 8vo, cloth. Rs. 10.

RULINGS OF THE PRIVY COUNCIL, 1825—1897.

On Appeal from the High Courts of Calcutta, Madras, Bombay, and Allahabad. The Chief Court of Punjab, The Courts of the Judicial Commissioner of the Central Provinces, The Recorder of Rangoon, &c., &c.

BY A. C. MITRA,

Barrister-at-Law.

Third Edition. Demy 8vo, cloth, pp. 299. Rs. 10.

THE

HINDU LAW OF INHERITANCE,

PARTITION, STRIDHAN AND WILLS:

With Leading Cases from 1825 to 1895.

BY A. C. MITRA,

Barrister-at-Law and Advocate, High Court, Calcutta, Author of "The Transfer of Property Act."

TAGORE LAW LECTURES, 1892.

Just Published. Royal 8vo, cloth. Rs. 10.

THE HINDU LAW OF ENDOWMENTS.

BY

PANDIT PRANNATH SARASWATI, M.A., B.L.,

Vakil, High Court, Calcutta.

In Crown 8vo, cloth. Rs. 4-4.

OUR

ADMINISTRATION OF INDIA,

AN ACCOUNT OF THE

CONSTITUTION AND WORKING OF THE CIVIL DEPARTMENTS OF THE INDIAN GOVERNMENT,

With special reference to the Work and Duties of a District Officer in Bengal,

BY H. A. D. PHILLIPS, C.S.

Author of "Manual of Indian Criminal Law," "Manual of Revenue and Collectorate Law."

New Edition in preparation.

THE STAMP LAW OF BRITISH INDIA

AS CONSTITUTED BY THE

INDIAN STAMP ACT (No. I OF 1879);

RULINGS AND CIRCULAR ORDERS OF ALL THE HIGH COURTS, Notifications, Resolutions, Rules and Orders of the Government of India, and of the various Local Governments, up to date; Schedules of all the Stamp Duties chargeable on Instruments in India from the earliest times.

EDITED WITH NOTES AND COMPLETE INDEX.

BY WALTER R. DONOGH, M.A.,

Of the Inner Temple, Barrister-at-Law.

Third Edition. 8vo, cloth. Rs. 6.

THE LAND ACQUISITION ACTS

(ACT I OF 1894 AND ACT XVIII OF 1885, MINES),
WITH INTRODUCTION, NOTES, ETC.;
The whole forming a complete Manual of Law and Practice on the subject of Compensation for Lands taken for Public Purposes.
Adapted for reference throughout British India.

By H. BEVERLEY, Esq., M.A., B.C.S.

Second Edition. Demy 8vo, cloth, gilt. Rs. 17-12.

LANDHOLDING

AND THE RELATION OF

LANDLORD AND TENANT

IN VARIOUS COUNTRIES OF THE WORLD.

By C. D. FIELD, M.A., LL.D., B.C.S.,
Late a Judge of Her Majesty's High Court of Judicature in Bengal.

8vo. Rs. 5-8; interleaved, Rs. 6.

MANUAL OF

THE REVENUE SALE LAW

AND

CERTIFICATE PROCEDURE OF LOWER BENGAL;

Being Act XI of 1859; Act VII, B.C., of 1868; and Act VII, B.C., of 1880; The Public Demands Recovery Act, including Selections from the Rules and Circular Orders of the Board of Revenue.

WITH NOTES.

By W. H. GRIMLEY, B.A., C.S.

TAGORE LAW LECTURES, 1875.

Royal 8vo, cloth. Rs. 8.

THE LAND TENURES OF LOWER BENGAL.

By ARTHUR PHILLIPS, Esq., M.A.,
Standing Counsel to the Government of India in the High Court of Calcutta, Late Fellow of St. Catherine's College, Cambridge, Barrister-at-Law.

Contains the History and Law relating to the Land Tenures of Bengal from the Mahomedan period to the present time.

CONTENTS.

I.—The Hindoo Period.
II.—The Mahomedan Period.
III.—Akbar's Settlement.
IV.—The Zemindar.
V.—The Talookdar and other Officers. Assessment of Revenue and Rent, and their Amount.
VI.—The Payment of Revenue. Assignment of Revenue.
VII.—The English Revenue System up to the Permanent Settlement.
VIII.—The Decennial and Permanent Settlement.
IX.—Changes in the Position of the Zemindar, Intermediate Tenure-holder, and Ryot.
X.—Relative Rights of Zemindars & Holders of Under-Tenures.
XI.—The Putnee Talook. Remedies for Recovery of Revenue.
XII.—Remedies for the Recovery of Rent, Lakhiraj and Service Tenures.

THE TAGORE LAW LECTURES, 1872.

Third Edition, Revised. Demy 8vo, cloth, lettered. Rs. 6.

THE HISTORY AND CONSTITUTION OF THE COURTS AND LEGISLATIVE AUTHORITIES IN INDIA.

BY HERBERT COWELL, ESQ.

I. Early History—The Grant of the Dewani.
II. Early History—The Regulating Act
III. Early History— The Settlement of 1781.
IV & V. The Legislative Council.
VI. Later History—The Presidency Town System.
VII. Later History—The Provincial Civil Courts.
VIII. The Provincial Criminal Courts.
IX. Privy Council.
X. The Superior Courts.
XI. The Inferior Civil Courts.
XII. The Inferior Criminal Courts and Police.

THE TAGORE LAW LECTURES, 1870 and 1871.

Rl. 8vo, cloth. Part I, 1870, *Rs.* 12; *Part II,* 1871, *Rs.* 8.

THE HINDU LAW:

Being a Treatise on the Law administered exclusively to Hindus by the British Courts in India.

BY HERBERT COWELL, ESQ.

THE TAGORE LAW LECTURES, 1873 and 1874.

Royal 8vo, cloth, lettered. Vol. II only available, Rs. 9.

MAHOMEDAN LAW:

BEING A DIGEST OF THE LAWS APPLICABLE PRINCIPALLY TO THE SUNNIS OF INDIA.

BY BABOO SHAMA CHURN SIRCAR.

CONTENTS.

1874.

I. On Gifts.
II. On Wasàyáh, or Wills.
III. On Executor, his Powers, &c.
IV. On Wakf, or Appropriation.
V. On the Wakf, or Appropriation of Masjids, &c.
SUMMARY OF CONTENTS OF THE IMAMIYAH CODE.
VI. Introductory Discourse.
VII. On Inheritance.
VIII. General and Special Rules of Succession.

1874.

IX. Succession.
X. Impediments to Succession.
XI. On Computation of Shares.
XII. On Permanent Marriage.
XIII. Dower, &c.
XIV. Temporary Marriage.
XV. On Divorce.
XVI. On Khulá, &c.
XVII. On the Revocation of Divorce, &c.
XVIII. On Sufá. or Pre-emption.
XIX. On Wakf, or Appropriation.

Fourth Edition. Entirely Re-written. 8vo, cloth.

INDIAN CASE-LAW ON TORTS.

BY R. D. ALEXANDER.

Fourth Edition, Revised and Enlarged.

In the Press.

Demy 8vo, cloth. Rs. 8.

POSSESSION IN THE CIVIL LAW

ABRIDGED FROM THE TREATISE OF VON SAVIGNY.

To which is added the Text of the Title on Possession from the Digest, with Notes.

COMPILED BY

J. KELLEHER, ESQ., *Bengal Civil Service.*

Demy 8vo, cloth. Rs. 8.

PRINCIPLES OF SPECIFIC PERFORMANCE & MISTAKE.

BY

J. KELLEHER, ESQ., *Bengal Civil Service.*

In Royal 8vo, cloth, gilt. Rs. 10.

MORTGAGE IN THE CIVIL LAW

Being an Outline of the Principles of the Law of Security, followed by the text of the Digest of Justinian, *with Translation and Notes,* and a Translation of the Corresponding Titles from the Italian Code.

By J. KELLEHER, B.C.S., Author of "Possession in the Civil Law."

Demy 8vo, cloth (1871). *Rs.* 10.

THE

LAW OF DIVORCE IN INDIA :

BEING

The Indian Divorce Act with Notes of Decided Cases on all branches of the Law relating to Matrimonial Suits applicable to India and with Forms of Pleading.

BY C. C. MACRAE, B.A.,

Barrister-at-Law.

Thick 8vo. Rs. 10.

THE PRACTICE

OF THE

PRESIDENCY COURT OF SMALL CAUSES OF CALCUTTA,

UNDER THE

PRESIDENCY SMALL CAUSE COURTS' ACT (XV OF 1882),

WITH NOTES AND AN APPENDIX.

BY R. S. T. MACEWEN, ESQ.,

Of Lincoln's Inn, Barrister-at-Law, late one of the Judges of the Presidency Court of Small Causes of Calcutta.

Royal 8vo, cloth, Rs. 3-8 ; *Interleaved, Rs.* 4 ; *Postage,* 4 *ans.*

AN

INCOME-TAX MANUAL:

BEING ACT II OF 1886.

WITH NOTES.

BY W. H. GRIMLEY, B.A., C.S.,

Commissioner of Income-Tax, Bengal.

Crown 8vo, cloth. Rs. 2.

THE

INLAND EMIGRATION ACT,

AS AMENDED BY ACT VII OF 1893.

Together with Act XIII of 1859, Breaches of Contract by Artificers—Act I of 1889, B.C., Sanitation of Emigrants—Assam Land and Revenue Regulation, 1886.

8vo, cloth. Rs. 12.

THE

LAW OF INDIAN RAILWAYS

AND COMMON CARRIERS:

A COMMENTARY UPON THE INDIAN RAILWAY ACT OF 1879, THE CARRIERS' ACT OF 1865, AND THE ACT KNOWN AS LORD CAMPBELL'S ACT (XIII OF 1865),

Together with such Sections and Quotations from the Merchant Shipping Act, the Contract Act, the Railway Act, and Canal Traffic Act, Civil Procedure Code, Court-Fees' Act, and the Statute of Limitation, as apply to Carriers by Land and Water.

BY W. G. MACPHERSON, ESQ.

Vol II. From 1885 *to* 1893. *Royal* 8*vo. Rs.* 7-8.

INDIAN CRIMINAL DIGEST

CONTAINING ALL THE IMPORTANT CRIMINAL RULINGS OF THE VARIOUS

HIGH COURTS IN INDIA,

Together with many English Cases which bear on the Criminal Law as administered in India.

WITH A GENERAL INDEX.

BY J. T. HUME, *Solicitor, High Court,*

A few copies of Volume I, price Rs. 7, *are still available.*

In Demy 8*vo. Second Edition. Cloth, gilt. Rs.* 7-8.

A MANUAL OF THE INDIAN ARMS ACT

(ACT XI OF 1878).

With Notes and Rules and Orders of the Imperial and Local Governments on the subject.

BY W. HAWKINS, ESQ.

Third Edition in preparation.

MEDICAL JURISPRUDENCE FOR INDIA.

BY I. B. LYON, F.C.S., F.I.C.,

Brigade-Surgeon, Bombay Medical Service; Chemical Analyst to Government; Professor of Chemistry and Medical Jurisprudence, Grant Medical College, Bombay.

Revised as to the Legal Matter

BY J. D. INVERARITY, ESQ.,

Barrister-at-Law.

"To all those who are engaged in the administration of the law—to magistrates, lawyers, medical men, and police, as well as to students—the book will be found quite invaluable.....In the arrangement of the matter, Dr. Lyon has left nothing to be desired in the effort to render the book valuable for reference. The work is a monument of industry and research, is marked by great lucidity of exposition, and deserves, on every ground, to take rank as a standard production of its class."—*Home News.*

Works by F. R. STANLEY COLLIER, B.C.S.

Third Edition. Crown 8vo, cloth, gilt. Rs. 5.

THE BENGAL

LOCAL SELF-GOVERNMENT HANDBOOK,

BEING B.C. ACT III OF 1885

AND

THE GENERAL RULES FRAMED THEREUNDER.

With Critical and Explanatory Notes, Hints regarding Procedure, and References to the Leading Cases on the Law relating to Local Authorities. To which is added an Appendix containing the principal Acts referred to, &c., &c.; and a full Index.

BY F. R. STANLEY COLLIER, B.C.S.,

Editor of the "Bengal Municipal Manual."

CONTENTS.

Bengal Local Self-Government Act, 1885.
Rules made by the Lieutenant-Governor under the Act.
Revised Dispensary Manual. Model Rules of Business.
The Bengal Ferries Act (B.C. Act I of 1885).
The Bengal Vaccination Act (V of 1880) and Rules.
The Cattle-Trespass Act, 1871, as amended.
The Local Authorities Loan Act, 1879, and Rules.
The Bengal Tramways Act, 1883.

Fourth Edition (Revised to 1898). In the Press.

Crown 8vo, cloth, gilt. Rs. 6.

THE BENGAL MUNICIPAL MANUAL,

AND

Other Laws relating to Municipalities in Bengal, with the Rules and Circulars issued by the Local Government, and a Commentary.

BY F. R. STANLEY COLLIER, B.C.S.

CONTENTS.

1. The Bengal Municipal Act, B.C., Act III of 1884.
2. Revised Rules for the Election of Municipal Commissioners.
3. Rules for the Preparation of the Annual Administration Report.
4. Account Rules issued under s. 82.
5. Model Rules for the conduct of business at Meetings.
6. Model Pension and Leave Rules.
7. The Municipal Taxation Act, No. XI of 1881.
8. The Hackney Carriage Act, B.C. No. V of 1866.
9. An Act for Registering Births and Deaths, B.C., No. IV of 1873.
10. The Slaughter-House Act, B.C.
11. The Cattle-Trespass Act.
12. The Local Authorities Loan Act.
13. Local Authorities Loan Rules.
14. Index.

In Thick Crown 8vo, cloth. Rs. 10.

MANUAL
OF
REVENUE AND COLLECTORATE LAW
BY
H. A. D. PHILLIPS, Esq., B.C.S.

CONTENTS.

Alluvion and Diluvian: Reg. XI, 1825; Act IX, 1847; Act XXXI, 1858; Act IV (B C.), 1868.
Certificate: Act XXVII. 1860.
Cesses, Road and Public Works: Act IX (B.C.), 1880, as amended.
Collectors. Assistant Collectors, &c.; Reg. II, 1793; Reg. XII. 1806; Reg. IV. 1821; Reg. VII, 1823; Reg. V, 1827; Act XX, 1848.
Drainage: Act VI (B.C.). 1880.
Embankments: Act II (B.C.), 1882.
Evidence: Act I, 1872
Excise: Act VII (B.C.), 1878. as amended by Act IV (B.C.), 1881, and Act I (B.C.), 1883.
Lakhiraj Grants and Service Tenures: Reg. XIX, 1793; Reg. XXXVII, 1793; Reg II. 1819; Regs. XIII and XIV. 1825.
Land Acquisition: Act X, 1870.
Land Registration: Reg. VIII. 1800, sec. 19; Act VII (B C.), 1876. as amended by Act V (B.C.), 1878.
Legal Practitioners: Act XVIII. 1879.
License Tax: Act II (B.C.), 1880.
Limitation: Act XV. 1877.
Opium: Reg. XX. 1817, sec. 29, Act I, 1878.
Partition: Act VIII (B C.), 1876.
Public Demands Recovery: Reg. III, 1793; Act VII (B.C.), 1868, as amended by Act II (B.C.), 1871; Act VII (B.C.), 1880; Act XIV, 1882.
Putni Sales: Reg. VIII, 1819; Reg. I. 1820; Act VIII, 1865.
Registration: Act III, 1877.
Revenue Sales: Act XI. 1859; Act XII, 1841; Act III (B.C.), 1862.
Salt: Act VII (B.C.), 1864, as amended by Act I (B.C.), 1873; Act XII, 1882.
Settlement: Reg. VIII, 1793; Reg. VII, 1822; Reg. IX, 1825; Reg. IV. 1828; Reg. IX, 1833; Act VIII (B.C.), 1879.
Stamps: Act I, 1879.
Survey: Act V (B.C.), 1875.
Wards: Act IX (B.C.), 1879. as amended by Act III (B.C.), 1881; Act XXXV. 1858 (Lunatics); Act XL, 1858 (Minors).

WITH NUMEROUS AND IMPORTANT
RULINGS AND ANNOTATIONS.

Royal 8vo, sewed. Reduced to Rs. 4.

A SELECTION
FROM THE
REGULATIONS OF THE BENGAL CODE,

Intended chiefly for the use of Candidates for appointments in the Judicial and Revenue Department.

CONTENTS.

Regulations: 1793—I, II, VIII, X, XIV, XIX, XXXVII, XXXVIII, XLIV, XLVIII, L. 1794—III. 1795—I, II, LI. 1798—I. 1799—VII. 1800—VIII, X. 1801—I. 1803—XXV, XXVII. 1804—V, X. 1806—XVII. 1807—VII. 1808—IV. 1814—XIX. 1817—V, XXII. XX, 1818—III. 1819—I, II, VI, VIII. 1820—I. 1822—VI, VII. 1824—IX. 1825—X, XI, XX. 1828—III VII. 1833-IX.

In Two Volumes, Demy 8vo, cloth. Rs. 12.

COMPARATIVE CRIMINAL JURISPRUDENCE;

Showing the Law, Procedure, and Case-law of other Countries arranged under the corresponding sections of the Indian Codes.

BY H. A. D. PHILLIPS, B.C.S.

Vol. I.—Crimes and Punishments.

,, II.—Procedure & Police.

The Notes in this work are arranged under the text of the Indian Criminal Codes, and are taken from the Penal and Criminal Procedure Codes of France, Belgium, Germany, Italy, Hungary, Holland, Denmark, Russia, New York, and Louisiana, from English and American Case-law, Rulings of the Court of Cassation in Paris, and other sources.

PHILLIPS' CRIMINAL MANUAL.

Second Edition, Enlarged. Thick Crown 8vo. Rs. 10.

A MANUAL

OF

INDIAN CRIMINAL LAW;

Fully Annotated, and containing all applicable Rulings of all High Courts arranged under the appropriate Sections up to date, also Circular Orders and Government Notifications.

BY H. A. D. PHILLIPS, B.C.S.

CONTENTS.

INDIAN PENAL CODE (ACT XLV OF 1860).

CODE OF CRIMINAL PROCEDURE (ACT X OF 1882).

Evidence Act (I of 1872).
Protection of Judicial Officers Act (XVIII of 1850).
State Prisoners' Act (XXXIV of 1850).
Penal Servitude Act (XXIV of 1855).
State Offences Act (XI of 1857).
State Prisoners' Act (III of 1858).
Police Act (V of 1861).
Whipping Act (VI of 1864).
Post Office Act (XIV of 1866).
General Clauses Act (I of 1868).
Prisoners' Testimony Act (XV of 1869).
Cattle-Trespass Act (I of 1871).
Prisoners' Act (V of 1871).
Criminal Tribes Act (XXVII of 1871).
Indian Oaths Act (X of 1873).
European Vagrancy Act (IX of 1874).
Reformatories Act (V of 1876).
Arms Act (XI of 1878).
Railways Act (IV of 1879).
Legal Practitioners' Act (XVIII of 1879).
Foreign Jurisdiction Act (XIII of 1879).
Telegraph Act (XIII of 1855).
Penal Clauses of Stamp and Registration Acts.

With all Amendments to April 1898. *Fcap* 8*vo* *Rs.* 4.

THE POCKET

PENAL, CRIMINAL PROCEDURE

AND

POLICE CODES,

ALSO

THE WHIPPING ACT, AND THE RAILWAY SERVANTS' ACT:

BEING

Acts XLV of 1860 (with Amendments), V of 1898, V of 1861, VI of 1864, XXXI of 1867, and X of 1886.

WITH A GENERAL INDEX.

New Edition (1891). 16*mo, cloth.* *Rs.* 4.

THE POCKET

CODE OF CIVIL LAW,

CONTAINING

The Civil Procedure Code (Act XIV of 1882).
The Court-Fees' Act (VII of 1870).
The Evidence Act (I of 1872).
The Specific Relief Act (I of 1877).
The Limitation Act (XV of 1877).
The Stamp Act (I of 1879).

WITH A GENERAL INDEX.

Reduced to Rs. 7.

THE

CODE OF CIVIL PROCEDURE

(ACT X OF 1877),

WITH NOTES AND APPENDIX.

BY THE HON'BLE L. P DELVES BROUGHTON.

WITH

A Supplement containing the amended Sections in Act XII of 1879, *and Act XIV of* 1882.

Royal 8vo, cloth. Rs. 16.

THE RULES AND ORDERS

OF THE

HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL, IN ITS SEVERAL JURISDICTIONS,

Including such of the Rules of the late Supreme and Sudder Courts as are still in force, and Forms, with an Abstract of the Charter, 14 Geo. III, the Charter Act and Charter of the High Court, the last Vice-Admiralty Commission, &c.

WITH NOTES.

BY R. BELCHAMBERS,

Registrar etc, of the High Court in its Original Jurisdiction.

8vo, sewed. Rs. 4.

DECLARATORY DECREES:

BEING

AN EXTENDED COMMENTARY ON SECTION XV, CODE OF CIVIL PROCEDURE, 1877.

BY L. P. DELVES BROUGHTON,

Barrister-at-Law.

Royal 8vo, cloth, lettered. Rs. 12.

AN INTRODUCTION TO THE

DUTIES OF MAGISTRATES AND JUSTICES OF THE PEACE IN INDIA.

BY SIR P. BENSON MAXWELL, KT.

SPECIALLY EDITED FOR INDIA.

BY THE HON'BLE L. P. DELVES BROUGHTON,

Barrister-at-Law.

Second Edition. 18mo, cloth. Rs. 2.

A GLOSSARY

OF

MEDICAL AND MEDICO-LEGAL TERMS

INCLUDING

THOSE MOST FREQUENTLY MET WITH IN THE COURTS.

COMPILED BY

R. F. HUTCHINSON, M.D.,

Surgeon-Major, Bengal Army.

LEGISLATIVE ACTS.

INDIAN INSOLVENT DEBTOR'S ACT (Vic. Cap. XXI. 9th June 1848). Royal 8vo. Stitched Re. 1-8.

INDIAN EVIDENCE ACT; being Act I of 1872, as amended by Act XVIII of 1872. Crown 8vo. As. 12.

INDIAN LIMITATION ACT; being Act XV of 1877, as amended by Act XII of 1879. Crown 8vo. As. 8.

INDIAN STAMP ACT (No. I of 1879). Crown 8vo. As. 8.

INDIAN REGISTRATION ACT; being No. III of 1877, as amended by Act XII of 1879. Crown 8vo. As. 8.

INDIAN INCOME-TAX (Act II of 1886). With Rules by the Government of India and the Bengal Government. Table of Contents. Royal 8vo. As. 12.

INLAND EMIGRATION ACT (I of 1882), as amended by Act VII of 1893 with Act XIII of 1859. Breaches of Contract by Artificers, etc., Act I of 1889, B C., Sanitation of Emigrants and the Assam Land and Revenue Regulation (of 1886). Crown 8vo, cloth. Rs. 2.

BENGAL TENANCY ACT (B.C., No. VIII of 1885). With Table of Contents and Index. Royal 8vo. Re. 1.

LEGISLATIVE ACTS

Published Annually

In Continuation of Mr. Theobald's Edition. Royal 8vo, cloth.

With Tables of Contents and Index.

Acts for 1874, Rs. 5; 1875, Rs. 5; 1876, Rs. 6; 1877, Rs.10; 1878, Rs. 5; 1879, Rs. 5; 1880, Rs. 4; 1881, Rs. 8; 1882, Rs. 14; 1883, Rs. 5; 1884, Rs. 5; 1885, Rs. 5; 1886, Rs. 5; 1887, Rs. 5; 1888, Rs. 4; 1889, Rs. 7; 1890, Rs. 5; 1891, Rs. 6; 1892, Rs. 2; 1893, Rs. 2-8; 1894, Rs. 5; 1895, Rs. 3-8; 1896, Rs. 4; 1897, Rs. 4.